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THE WRITINGS

OF

JAMES MADISON

COMPRISING HIS PUBLIC PAPERS AND HIS PRIVATE CORRESPONDENCE, INCLUDING NUMEROUS LETTERS AND DOCUMENTS NOW FOR THE FIRST TIME PRINTED

EDITED BY

GAILLARD HUNT

VOLUME IX.

1819–1836

G. P. PUTNAM'S SONS

NEW YORK
27 WEST TWENTY-THIRD ST.

LONDON
24 BEDFORD ST., STRAND

The Knickerbocker Press

1910

39323

The Knickerbocker Press, New York

973.5
M26a
v.9

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NOTE.

The system which I have followed in compiling the volumes of Madison's writings has been to include those which narrate events important to American history, those which show his agency in such events, those which expound the Constitution of the United States, and those which illustrate his private life and character. The progress of the Revolution, the formation of the Constitution, the constitutional crises of 1798 and 1832, the struggle for neutrals' rights, the economic and social conditions surrounding a Southern planter and slaveholder are the chief subjects which are illuminated by these pages. Many of the papers have never been printed before and all of them are printed from original sources where such exist. A few have been available only from a previously-printed record. Such are his speeches in the Virginia convention which ratified the Constitution in 1788 and in the early congresses; but such important state papers as his vital instructions when he was Secretary of State, while most of them had contemporaneous publication, are here given with accuracy from the

official record, and few of them were given accurately in their previous publication. In determining what papers should be included I have resisted the temptation to select newly-discovered letters rather than better known but more important papers.

Since my work began a number of additional sources of material have been opened to me, and for this courtesy I have made acknowledgment in the appropriate places; but I wish to record separately my indebtedness and gratitude to the Chicago Historical Society, whose great collection of Madison papers, second only to that which the Federal Government owns, has been freely placed at my disposal and freely made use of.

G. H.

WASHINGTON, *April*, 1910.

CHRONOLOGY OF JAMES MADISON.

1819–1836.

1819.	
	At Montpelier.
	Begins arrangement of his letters.
Nov. 20.	Discusses slavery in territories.
1820.	
June 13.	Shows errors in journals of constitutional convention.
1821.	
May 6.	Discusses the supreme court.
Aug. 26.	Shows errors in Yates's minutes.
1822.	
Aug. 13.	Writes on Declaration of Independence.
1823.	
	Information concerning slavery.
Oct. 30.	Discusses South American independence.
1824.	
Feb. 11.	Nature of constitution propounded.
Mar. 23.	Principles of protective tariff.
Apr. 17.	Internal improvements discussed.
Nov. —	Meets Lafayette.
1825.	
Apr. 16.	Asks loan from U. S. Bank.
1826.	
Mar. 10.	Discusses origin of federal convention.
July 6.	Receives news of Jefferson's death.
1827.	
Feb. 2.	Writes concerning his records.
Feb. —	Defends conduct of war of 1812.

Mar. 22.	Constitutionality of protective tariff.
1828.	
Feb. 20.	Nominated as presidential elector.
May 13.	Shows contest in federal convention.
Aug. 2.	Discusses disunion sentiment.
1829.	
Aug. 10.	Expounds Virginia doctrine of 1798.
Dec. 2.	In Virginia constitutional convention.
1830.	
May —	On common defense and general welfare.
1831.	
Mar. 27.	On authorship of Virginia resolutions of 1798.
April — June 1.	Discusses Pinckney's plan.
Dec. 28.	On emancipation and colonization.
Dec. —	Nullification.
1832.	
Dec. 23.	Right of secession discussed.
1833.	
Feb. 23.	Plan for emancipation. The Virginia plan for constitution.
1834.	
Mar. 10.	Authorship of constitution.
1835.	
April 19.	Makes his will.
June 5.	Pinckney's plan discussed. Explains sovereignty. Discusses nullification.
1836.	
June 28.	Dies.

THE WRITINGS OF

JAMES MADISON.

TO ROBERT WALSH. MAD. MSS.

MONTPELLIER, Nov^r 27 1819.

DEAR SIR,—Your letter of the 11th was duly rec^d and I should have given it a less tardy answer, but for a succession of particular demands on my attention, and a wish to assist my recollections, by consulting both Manuscript & printed sources of information on the subjects of your enquiry. Of these, however, I have not been able to avail myself but very partially.

As to the intention of the framers of the Constitution in the clause relating to "the migration and importation of persons, &c" the best key may perhaps be found in the case which produced it. The African trade in slaves had long been odious to most of the States, and the importation of slaves into them had been prohibited. Particular States however continued the importation, and were extremely averse to any restriction on their power to do so. In the convention the former States were anxious,

in framing a new constitution, to insert a provision for an immediate and absolute stop to the trade. The latter were not only averse to any interference on the subject; but solemnly declared that their constituents would never accede to a Constitution containing such an article. Out of this conflict grew the middle measure providing that Congress should not interfere until the year 1808; with an implication, that after that date, they might prohibit the importation of slaves into the States then existing, & previous thereto, into the States not then existing. Such was the tone of opposition in the States of S. Carolina & Georgia, & such the desire to gain their acquiescence in a prohibitory power, that on a question between the epochs of 1800 & 1808, the States of N. Hampshire, Mass^{tts} & Connecticut, (all the eastern States in the Convention,) joined in the vote for the latter, influenced however by the collateral motive of reconciling those particular States to the power over commerce & navigation; against which they felt, as did some other States, a very strong repugnance. The earnestness of S. Carolina & Georgia was farther manifested by their insisting on the security in the V article, against any amendment to the Constitution affecting the right reserved to them, & their uniting with the small states, who insisted on a like security for their equality in the Senate.

But some of the States were not only anxious for a Constitutional provision against the introduction of slaves. They had scruples against admitting

the term "slaves" into the Instrument. Hence the descriptive phrase, "migration or importation of persons;" the term migration allowing those who were scrupulous of acknowledging expressly a property in human beings, to view *imported* persons as a species of emigrants, while others might apply the term to foreign malefactors sent or coming into the country. It is possible tho' not recollected, that some might have had an eye to the case of freed blacks, as well as malefactors.[1]

But whatever may have been intended by the term "migration" or the term "persons," it is most certain, that they referred exclusively to a migration or importation from other countries into the U. States; and not to a removal, voluntary or involuntary, of slaves or freemen, from one to another part of the U. States. Nothing appears or is recollected that warrants this latter intention. Nothing in the proceedings of the State conventions indicates such a construction there.[2] Had such been the con-

[1] See *ante*, Vol. IV., pp. 264, 327, 414.

[2] The debates of the Pennsylvania Convention contain a speech of Mr. Willson, (*) (Decr 3, 1787) who had been a member of the general convention, in which, alluding to the clause tolerating for a time, the farther importation of slaves, he consoles himself with the hope that, in a few years it would be prohibited altogether; observing that in the mean time, the new States which were to be formed would be under the controul of Congress *in this particular*, and slaves would never be introduced among them. In another speech on the day following and alluding to the same clause, his words are "yet the lapse of a few years & Congress will have power to *exterminate* slavery within our borders." How far the language of Mr. W. may have been accurately reported is not known. The expressions used, are more vague & less

(*) See letter of J. M. to Mr. Walsh, Jany 11, 1820.—*Madison's Note.*

struction it is easy to imagine the figure it would have made in many of the states, among the objections to the constitution, and among the numerous amendments to it proposed by the State conventions[1] not one of which amendments refers to the clause in question. Neither is there any indication that Congress have heretofore considered themselves as deriving from this Clause a power over the migration or removal of individuals, whether

consistent than would be readily ascribed to him. But as they stand, the fairest construction would be, that he considered the power given to Congress, to arrest the importation of slaves as "laying a foundation for banishing slavery out of the country; & tho' at a period more distant than might be wished, producing the same kind of gradual change which was pursued in Pennsylvania." (See his speech, page 90 of the Debates.) By this "change," after the example of Pennsylvania, he must have meant a change by the other States influenced by that example, & yielding to the general way of thinking & feeling, produced by the policy of putting an end to the importation of slaves. He could not mean by "banishing slavery," more than by a power "to exterminate it," that Congress were authorized to do what is literally expressed.—*Madison's Note.*

In the letter Madison said:

"It is far from my purpose to resume a subject on which I have perhaps already exceeded the proper limits. But, having spoken with so confident a recollection of the meaning attached by the Convention to the term "migration" which seems to be an important hinge to the Argument, I may be permitted merely to remark that Mr. Wilson, with the proceedings of that assembly fresh on his mind, distinctly applies the term to persons coming to the U. S. *from abroad*, (see his printed speech, p. 59): and that a consistency of the passage cited from the Federalist with my recollections, is preserved by the discriminating term "*beneficial*" added to voluntary emigrations from Europe to America."—*Mad. MSS.* Wilson's speech may be found in *Elliott's Debates*, ii., 451.

[1] In the convention of Virg[a] the opposition to the Constitution comprised a number of the ablest men in the State. Among them were Mr. Henry & Col. Mason, both of them distinguished by their

freemen or slaves, from one State to another, whether new or old: For it must be kept in view that if the power was given at all, it has been in force eleven years over all the States existing in 1808, and at all times over the States not then existing. Every indication is against such a construction by Congress of their constitutional powers. Their alacrity in exercising their powers relating to slaves, is a proof that they did not claim what they did not exercise. They punctually and unanimously put in force the power accruing in 1808 against the further importation of slaves from abroad. They had previously directed their power over American vessels on the high seas, against the African trade. They lost no time in applying the prohibitory power to Louisiana, which having maritime ports, might be an inlet for slaves from abroad. But they forebore to extend the prohibition to the introduction of slaves from other parts of the Union. They had even prohibited the importation of slaves into the Mississippi Territory from *without the limits of the U. S.* in the year 1798, without extending the prohibition to the introduction of slaves from *within those limits;* altho' at the time the ports of Georgia and S. Carolina

acuteness, and anxious to display unpopular constructions. One of them Col. Mason, had been a member of the general convention and entered freely into accounts of what passed within it. Yet neither of them, nor indeed any of the other opponents, among the multitude of their objections, and farfetched interpretations, ever hinted, in the debates on the 9th Sect. of Ar. 1, at a power given by it to prohibit an interior migration of any sort. The meaning of the Sec^{n} as levelled against migrations or importations from abroad, was not contested.—*Madison's Note.*

were open for the importation of slaves from abroad, and increasing the mass of slavery within the U. States.

If these views of the subject be just, a power in Congress to controul the interior migration or removals of persons, must be derived from some other source than Sect 9, Art. 1; either from the clause giving power "to make all needful rules and regulations respecting the Territory or other property belonging to the U. S. or from that providing for the admission of New States into the Union."

The terms in which the 1st. of these powers is expressed, tho' of a ductile character, cannot well be extended beyond a power over the Territory as property, & a power to make the provisions really needful or necessary for the Govt of settlers until ripe for admission as States into the Union. It may be inferred that Congress did not regard the interdict of slavery among the needful regulations contemplated by the constitution; since in none of the Territorial Governments created by them, is such an interdict found. The power, however be its import what it may, is obviously limited to a Territory whilst remaining in that character as distinct from that of a State.

As to the power of admitting new States into the federal compact, the questions offering themselves are; whether congress can attach conditions, or the new States concur in conditions, which after admission, would abridge or *enlarge* the constitutional rights of legislation common to the other States;

whether Congress can by a compact with a new member take power either to or from itself, or place the new member above or below the equal rank & rights possessed by the others; whether all such stipulations, expressed or implied would not be nullities, and so pronounced when brought to a practical test. It falls within the Scope of your enquiry, to state the fact, that there was a proposition in the convention to discriminate between the old and new States, by an Article in the Constitution declaring that the aggregate number of representatives from the States thereafter to be admitted should never exceed that of the States originally adopting the Constitution. The proposition happily was rejected. The effect of such a discrimination, is sufficiently evident.

In the case of Louisiana, there is a circumstance which may deserve notice. In the Treaty ceding it, a privilege was retained by the ceding party, which distinguishes between its ports & others of the U. S. for a special purpose & a short period.[1] This privilege however was the result not of an ordinary

[1] Article VII of the treaty of cession (1803) provided that "French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France or her said colonies, and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than that paid by the citizens of the United States." —*Treaties and Conventions*, 333.

legislative power in Congress; nor was it the result of an arrangement between Congress & the people of Louisiana. It rests on the ground that the same entire power, even in the nation, over that territory, as over the original territory of the U. S. never existed; the privilege alluded to being in the deed of cession carved by the foreign owner, out of the title conveyed to the purchaser. A sort of necessity therefore was thought to belong to so peculiar & extraordinary a case. Notwithstanding this plea it is presumable that if the privilege had materially affected the rights of other ports, or had been of a permanent or durable character, the occurrence would not have been so little regarded. Congress would not be allowed to effect through the medium of a Treaty, obnoxious discriminations between new and old States, more than among the latter.

With respect to what has taken place in the N. W. Territory, it may be observed, that the ordinance giving its distinctive character on the Subject of Slaveholding proceeded from the old Congress, acting, with the best intentions, but under a charter which contains no shadow of the authority exercised. And it remains to be decided how far the States formed within that Territory & admitted into the Union, are on a different footing from its other members, as to their legislative sovereignty.

For the grounds on which $\frac{3}{5}$ of the slaves were admitted into the ratio of representation, I will with your permission, save trouble by referring to No. 54 of the Federalist. In addition, it may be stated

that this feature in the Constitution was combined with that relating to the power over Commerce & navigation. In truth these two powers, with those relating to the importation of slaves, & the Articles establishing the equality of representation in the Senate & the rule of taxation, had a complicated influence on each other which alone would have justified the remark, that the Constitution was "the result of mutual deference & Concession."

It was evident that the large States holding slaves, and those not large which felt themselves so by anticipation, would not have concurred in a constitution, allowing them no more Representation in one legislative branch than the smallest States, and in the other less than their proportional contributions to the Common Treasury.

The considerations which led to this mixed ratio which had been very deliberately agreed on in Ap[l], 1783, by the old Congress, make it probable that the Convention could not have looked to a departure from it, in any instance where slaves made a part of the local population.

Whether the Convention could have looked to the existence of slavery at all in the new States is a point on which I can add little to what has been already stated. The great object of the Convention seemed to be to prohibit the increase by the *importation* of slaves. A power to emancipate slaves was disclaimed; Nor is anything recollected that denoted a view to controul the distribution of those within the Country. The case of the N. Western

Territory was probably superseded by the provision agst the importation of slaves by S. Carolina & Georgia, which had not then passed laws prohibiting it. When the existence of slavery in that territory was precluded, the importation of slaves was rapidly going on, and the only mode of checking it was by narrowing the space open to them. It is not an unfair inference that the expedient would not have been undertaken, if the power afterward given to terminate the importation everywhere, had existed or been even anticipated. It has appeared that the present Congress never followed the example during the twenty years preceding the prohibitory epoch.

The *expediency* of exercising a supposed power in Congress, to prevent a diffusion of the slaves actually in the Country, as far as the local authorities may admit them, resolves itself into the probable effects of such a diffusion on the interests of the slaves and of the Nation.

Will it or will it not better the condition of the slaves, by lessening the number belonging to individual masters, and intermixing both with greater masses of free people? Will partial manumissions be more or less likely to take place, and a general emancipation be accelerated or retarded? Will the moral & physical condition of slaves, in the mean time, be improved or deteriorated? What do experiences and appearances decide as to the comparative rates of generative increase, in their present, and, in a dispersed situation?

Will the aggregate strength security tranquillity

and harmony of the whole nation be advanced or impaired by lessening the proportion of slaves to the free people in particular sections of it?

How far an occlusion of the space now vacant, ag.st the introduction of slaves may be essential to prevent compleatly a smuggled importation of them from abroad, ought to influence the question of expediency, must be decided by a reasonable estimate of the degree in which the importation would take place in spight of the spirit of the times, the increasing co-operation of foreign powers agst the slave trade, the increasing rigor of the Acts of Congress and the vigilant enforcement of them by the Executive; and by a fair comparison of this estimate with the considerations opposed to such an occlusion.

Will a multiplication of States holding slaves, multiply advocates of the importation of foreign slaves, so as to endanger the continuance of the prohibitory Acts of Congress? To such an apprehension seem to be opposed the facts, that the States holding fewest slaves are those which most readily abolished slavery altogether; that of the 13 primitive States, Eleven had prohibited the importation before the power was given to Congs, that all of them, with the newly added States, unanimously concurred in exerting that power; that most of the present slaveholding States cannot be tempted by motives of interest to favor the reopening of the ports to foreign slaves; and that these, with the States which have even abolished slavery within themselves, could never be outnumbered in the National Coun-

cils by new States wishing for slaves, and not satisfied with the supply attainable within the U. S.

On the whole, the Missouri question, as a constitutional one, amounts to the question whether the condition proposed to be annexed to the admission of Missouri would or would not be void in itself, or become void the moment the territory should enter as a State within the pale of the Constitution. And as a question of expediency & humanity, it depends essentially on the probable influence of such restrictions on the quantity & duration of slavery, and on the general condition of slaves in the U. S.

The question raised with regard to the tenor of the stipulation in the Louisiana Treaty, on the subject of its admission, is one which I have not examined, and on which I could probably throw no light if I had.

Under one aspect of the general subject, I cannot avoid saying, that apart from its merits under others, the tendency of what has passed and is passing, fills me with no slight anxiety. Parties under some denominations or other must always be expected in a Gov.t as free as ours. When the individuals belonging to them are intermingled in every part of the whole Country, they strengthen the Union of the Whole, while they divide every part. Should a State of parties arise, founded on geographical boundaries and other Physical & permanent distinctions which happen to coincide with them, what is to controul those great repulsive Masses from awful shocks ag.st each other?

The delay in answering your letter made me fear you might doubt my readiness to comply with its requests. I now fear you will think I have done more than these justified. I have been the less reserved because you are so ready to conform to my inclination formerly expressed, not to be drawn from my sequestered position into public view.

Since I thanked you for the copy of your late volume[1] I have had the pleasure of going thro' it; and I should have been much disappointed, if it had been rec^d^ by the public with less favor than is everywhere manifested. According to all accounts from the Continent of Europe, the American character has suffered much there by libels conveyed by British Prints, or circulated by itinerant Calumniators. It is to be hoped the truths in your book may find their way thither. Good translations of the Preface alone could not but open many eyes which have been blinded by prejudices against this Country.

TO THOMAS HERTELL. MAD. MSS.

Dec^r^ 20, 1819.

DEAR SIR,—I have been some time à debtor for your favor of Nov^r^ 11th accompanied by a Copy of your Exposè.[2] It reached me at a time when my

[1] *Appeal from the Judgment of Great Britain respecting the United States.* (1819.)

[2] Hertell sent Madison his pamphlet entitled "An Exposè of the causes of intemperate drinking and the means by which it may be obviated."—*Mad. MSS.*

attention had some particular calls on it; and I was so unlucky as to lose by an accident, the answer which I had prepared for a late mail.

I now repeat the thanks it contained for your communication. I have read with pleasure the interesting lights in which you have placed a subject, which had passed thro' so many able hands. The task of abolishing altogether the use of intoxicating, & even exhilarating drinks, is an arduous one. If it should not succeed in the extent at which you aim, your mode of presenting the causes and effects of the prevailing intemperance, with the obligation & operation of an improved police & of corrective examples, cannot fail to recompense your efforts tho' it should not satisfy your philanthropy & patriotism.

A *compleat* suppression of every species of stimulating indulgence, if attainable at all, must be a work of peculiar difficulty, since it has to encounter not only the force of habit, but propensities in human nature. In every age & nation, some exhilarating or exciting substance seems to have been sought for, as a relief from the languor of idleness, or the fatigues of labor. In the rudest state of Society, whether in hot or cold climates, a passion for ardent spirits is in a manner universal. In the progress of refinement, beverages less intoxicating, but still of an exhilarating quality, have been more or less common. And where all these sources of excitement have been unknown or been totally prohibited by a religious faith, substitutes have been found in

opium, in the nut of the betel, the root of the Ginseng, or the leaf of the Tob° plant.

It w^d doubtless be a great point gained for our Country, and a great advantage towards the object of your publication, if ardent spirits could be made only to give way to malt liquors, to those afforded by the apple & pear, and the lighter & cheaper varieties of wine. It is remarkable that in the Countries where the grape supplies the common beverage, habits of intoxication are rare; and in some places almost without example.

These observations, as you may well suppose are not made for notice in a new edition of your work, of which they are certainly not worthy, even if they should not too much vary from your own view of the subject. They are meant merely as an expression to yourself of that respect for the laudable object of the Exposè, and for its author, of which sincere assurances are tendered.

TO CLARKSON CROLIUS. MAD. MSS.

MONTPELLIER, Dec^r, 1819.

I have received Sir the copy of the Address of the Society of Tammany, with which I have been politely favored.[1]

The want of economy in the use of imported articles enters very justly into the explanation given of the

[1] November 29 Crolius transmitted an address of the Tammany Society on the subject of national economy and domestic manufactures.—*Mad. MSS.*

causes of the present general embarrassments. Were every one to live within his income, or even the savings of the prudent to exceed the deficits of the extravagant, the balance in the foreign commerce of the nation, could not be against it. The want of a due economy has produced the unfavorable turn which has been experienced. Hence the need of specie to meet it, the call on the vaults of the Banks, and the discontinuance of their discounts, followed by their curtailments: Hence too the failure of so many Banks, with a diminished confidence in others: And hence finally a superabundance of debts, without the means of paying them.

The Address seems very justly also to charge much of the general evil by which many of the Banks themselves have been overwhelmed, on the multiplicity of these Institutions, and a diffusion of the indiscriminate loans, of which they have been the sources. It has been made a question whether Banks, when restricted to spheres in which temporary loans only are made to persons in active business promising quick returns, do not as much harm to imprudent as good to prudent borrowers. But it can no longer be a doubt with any, that loan offices, carrying to every man's door, and even courting his acceptance of, the monied means of gratifying his present wishes under a prospect or hope of procrastinated repayments, must, of all devices, be the one most fatal to a general frugality, and the benefits resulting from it.

The effect of domestic manufactures in diminish-

ing imports, and as far as they are carried on by hands attracted from abroad, or by hands otherwise idle or less productively employed at home, without a proportional diminution of the exports, merits certainly a distinguished attention in marking out an internal system of political Economy, and in counteracting a tendency in our foreign Commerce to leave a balance against us. The relief from this source would be more effectual, but for the circumstance that the articles which contribute much to an excess of our imports over our exports, are articles, some not likely soon, others perhaps not at all to be produced within ourselves. There is moreover a feature in the trade between this Country and most others, which promotes not a little an unfavorable result. Our Exports being chiefly articles for food, for manufactures, or for a consumption easily surcharged, the amount of them called for, never exceeds what may be deemed real and definite wants. This is not the case with our imports. Many of them, some the most costly, are objects neither of necessity, nor utility; but merely of fancy & fashion, wants of a nature altogether indefinite. This relative condition of the trading parties, altho' it may give to the one furnishing the necessary & profitable articles, a powerful advantage over the one making its returns in superfluities, on extraordinary occasions of an interrupted intercourse; yet, in the ordinary and free course of commerce, the advantage lies on the other side; and it will be the greater in proportion to the lengthened credits on which the

articles gratifying extravagant propensities are supplied. Such an inequality must in a certain degree controul itself. It w^d be compleatly redressed by a change in the public preferences & habits, such as is inculcated in the address.

In not regarding domestic manufactures as of themselves, an adequate cure for all our embarrassments, it is by no means intended to detract from their just importance, or from the policy of legislative protection for them.

However true it may be in general that the industrious pursuits of individuals, ought to be regulated by their own sagacity & interest, there are practical exceptions to the Theory, which sufficiently speak for themselves. The Theory itself indeed requires a similarity of circumstances, and an equal freedom of interchange among commercial nations, which have never existed. All are agreed also that there are certain articles so indispensable that no provident nation would depend for a supply of them on any other nation. But besides these, there may be many valuable branches of manufactures which if once established, would support themselves, and even add to the list of exported commodities; but which without public patronage would either not be undertaken or come to a premature downfall. The difficulty of introducing manufactures, especially of a complicated character & costly outfit, and above all, in a market preoccupied by powerful rivals, must readily be conceived. They appear accordingly to have required, for their introduction

into the Countries where they are now seen in their greatest extent & prosperity, either the liberal support of the Government, or the aid of exiled or emigrant manufacturers, or both of these advantages.

In determining the degree of encouragement which can be afforded to domestic manufactures, it is evident that, among other considerations, a fair comparison ought to be made of what might be saved by supplies at home during foreign wars, to say nothing of our own, with the expence of supporting manufactures in times of peace against foreign competitions in our market. The price of domestic fabrics, tho' dearer than foreign, in times of peace, might be so much cheaper in times of war, as to be cheaper also than the medium price of the foreign taking the two periods together. Yet the Am^{n} manufacturer if unprotected during the periods of peace w^{d} necessarily be undermined by the foreign; and he could not be expected to resume his undertaking at the return of war, knowing the uncertainty of its continuance; and foreseeing his certain ruin at the end of it. Estimates on these points cannot be made with much precision, but they ought not on that acc^{t} to be overlooked; and in making them a strong leaning ought to be indulged towards the policy of securing to the nation independent resources within itself.

If I have extended these remarks beyond the proper limits I must find my apology in the nature of the subject; & in the tenor of your letter, for Which

I pray you to accept my acknowledg^{ts}, with my respects & good wishes.

TO NOAH WEBSTER. MAD. MSS.

MONTPELLIER (near Orange Court House Virg^{a}) Jan^{y} —, 1820.

DEAR SIR,—In looking over my papers in order to purge and finally arrange my files, my attention fell on your letter of Aug. 20, 1804, in which I was requested to give such information as I could as to the origin of the change in the Federal Government which took place in 1788. My answer does not appear, the copy of it having been lost, if one was retained as is probable. Will you be so obliging as to enable me to replace it, and to pardon the trouble I am imposing on you; accepting at the same time assurances of my esteem, and of my friendly respects.

Where can your pamphlet entitled "Sketches of Am^{n} policy" be now obtained; also that of Mr. Peletiah Webster referred to in your letter.[1]

[1] See *ante*, Vol. VII., p. 162. Peletiah Webster's pamphlet was: *A Dissertation on the Political Union and Constitution of the Thirteen United States of North America: which is necessary to their Preservation and Happiness, humbly offered to the Public, by a Citizen of Philadelphia.* Philadelphia: 1783. It was reprinted in 1908, as Pub. Doc. 461, 60th Cong., 1st Sess. (Senate.)

Apparently, Madison was unsuccessful in obtaining the pamphlet from Noah Webster for he wrote to Tench Coxe November 10, 1820:

In looking over my pamphlets & other printed papers, I perceive a chasm in the Debates of Congress between March 4, 1790 (being the close of N° III of Vol IV, by T. Lloyd) & the removal of Congress from Philadelphia to Washington. May I ask the favor of you, if it can be done without difficulty, to procure for me the means of filling

TO JAMES MONROE. MAD. MSS.

MONTP^{LR}, Feb^{y} 10, 1820.

DEAR SIR,—I have duly rec^{d} your fav^{r} of the 5th, followed by a copy of the public documents, for which I give you many thanks. I sh^{d} like to get a copy of the Journals of the Convention.[1] Are they to be purchased & where?

It appears to me as it does to you, that a coupling of Missouri with Maine, in order to force the entrance of the former thro' the door voluntarily opened to the latter is, to say the least, a very doubtful policy. Those who regard the claims of both as similar & equal, and distrust the views of such as wish to disjoin them may be strongly tempted to resort to the expedient; and it w^{d} perhaps, be too much to say that in no possible case such a resort c^{d} be justified. But it may at least be said that a very peculiar case only could supersede the general policy of a direct & magnanimous course, appealing to the justice & liberality of others, and trusting to the influence of conciliatory example.

I find the idea is fast spreading that the zeal wth which the extension, so called, of slavery is opposed, has, with the coalesced *leaders*, an object very

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the chasm. I should be glad also to procure a pamphlet, "Sketches of American policy by Noah Webster," published in Philadelphia in 1784 or '5; and another, "Pelitiah Webster's dissertation on the political Union & Constitution of the thirteen U. States," published in 1783 or '4. Both of them have disappeared from my collection of such things.—*Mad. MSS.*

[1] The *Journal, Acts and Proceedings of the Convention*, etc., Boston, 1819, published by authority of joint resolution of Congress of March 27, 1818. *Ante*, III., p. xiv.

different from the welfare of the slaves, or the check to their increase; and that their real object is, as you intimate, to form a new state of parties founded on local instead of political distinctions; thereby dividing the Republicans of the North from those of the South, and making the former instrumental in giving to the opponents of both an ascendancy over the whole. If this be the view of the subject at Washington it furnishes an additional reason for a conciliatory proceeding in relation to Maine.

I have been truly astonished at some of the doctrines and deliberations to which the Missouri question has led; and particularly so at the interpretations put on the terms "migration or importation &c." Judging from my own impressions I sh^{d} deem it impossible that the memory of any one who was a member of the Gen^{l} Convention, could favor an opinion that the terms did not *exclusively* refer to Migration & importation *into the U. S.* Had they been understood in that Body in the sense now put on them, it is easy to conceive the alienation they would have there created in certain States; And no one can decide better than yourself the effect they would have had in the State Conventions, if such a meaning had been avowed by the Advocates of the Constitution. If a suspicion had existed of such a construction, it w^{d} at least have made a conspicuous figure among the amendments proposed to the Instrument.

I have observed *as yet*, in none of the views taken of the Ordinance of 1787, interdicting slavery N. W.

of the Ohio, an allusion to the circumstance, that when it passed, the Cong.s had no authority to prohibit the importaton of slaves from abroad; that all the States had, & some were in the full exercise of the right to import them; and, consequently, that there was no mode in which Cong.s could check the evil, but the indirect one of narrowing the space open for the reception of slaves. Had a federal authority then existed to prohibit directly & totally the importation from abroad, can it be doubted that it w.d have been exerted? and that a regulation having merely the effect of preventing an interior dispersion of the slaves actually in the U. S. & creating a distinction among the States in the degrees of their sovereignty, would not have been adopted, or perhaps, thought of?

No folly in the Spanish Gov.t can now create surprise. I wish you happily thro' the thorny circumstances it throws in your way. Adieu &c.

TO JAMES MONROE. MAD. MSS.

MONTP.R, Feb.y 23, 1820

D.R SIR,—I rec.d yours of the 19th on Monday. Gen.l Brown who returned from Monticello that evening has been since with me till 10 O'C today. Your letter found me indisposed from exposure to a cold wind, without due precaution, And I have continued so. I write now with a fever on me. This circumstance will account for both the delay & the brevity in complying with your request.

The pinch of the difficulty in the case stated seems to be in the words "forever," coupled with the interdict relating to the Territory N. of L 36° 30′.[1] If the necessary import of these words be that they are to operate as a condition on future States admitted into the Union, and as a restriction on them after admission, they seem to encounter indirectly the argts which prevailed in the Senate for an unconditional admission of Missouri. I must conclude therefore from the assent of the Senate to the words, after the strong vote on constitutional grounds agst the restriction on Missouri, that there is some other mode of explaining them in their actual application.

As to the right of Congs to apply such a restriction during the Territorial Periods, it depends on the clause in the Constitution specially providing for the management of these subordinate establishments.

On one side it naturally occurs that the right being given from the necessity of the case, and in suspension of the great principle of self Govt ought not to be extended farther nor continued longer than the occasion might fairly require.

On the other side it cannot be denied that the Constl phrase, "to make all rules" &c as expounded

[1] The Missouri Act was approved March 6, 1820. Section 8 read: "That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in punishment of crimes . . . shall be and is hereby forever prohibited."—*3 Stat.*, 548.

by uniform practice, is somewhat of a ductile nature, and leaves much to Legislative discretion.

The questions to be decided seem to be whether a *territorial* restriction be an assumption of illegitimate power, or 2 a measure of legitimate power. And if the latter only whether the injury threatened to the nation from an acquiescence in the measure, or from a frustration of it, under all the circumstances of the case, be the greater. On the first point there is certainly room for difference of Opinion, tho' for myself I must own that I have always leaned to the belief that the restriction was not within the true scope of the Constitution. On the alternative presented by the second point there can be no room, with the cool and candid, for blame on those acquiescing in a conciliatory course, the demand for which was deemed urgent, and the course itself deemed not irreconcilable with the Constitution.

This is the hasty view of the subject I have taken. I am aware that it may be suspected of being influenced by the habit of a guarded construction of Const^{l} powers; and I have certainly felt all the influence that c^{d} justly flow from a conviction, that an uncontrouled dispersion of the slaves now in the U. S. was not only best for the nation, but most favorable for the slaves, also both as to their prospects of emancipation, and as to their condition in the mean time.

The inflammatory conduct of Mr. King surprises every one. His general warfare agst the slaveholding States, and his efforts to disparage the

securities derived from the Const[n] were least of all to be looked for. I have noticed less of recurrence to the contemporary expositions of the Charter than was to be expected from the zeal & industry of the Champions in Debate. The proceedings of the V[a] Convention have been well sifted; but those of other States ought not to have been Overlooked. The speeches of Mr. King in Mass[ts] and Mr. Hamilton in N. York shew the ground on which they vindicated particularly the Compound rule of representation in Cong[s]. And doubtless there are many other evidences of the way of thinking then prevalent on that & other articles equally the result of a sense of *equity* & a spirit of mutual concession.

TO C. D. WILLIAMS. MAD. MSS.

Feb[y] —, 1820

I have received your favor of [January 29] accompanied by the pamphlet on the subject of a circulating medium.[1]

I have not found it convenient to bestow on the plan proposed the attention necessary to trace the bearings and operations of new arrangements ingeniously combined on a subject which in its most simple forms has produced so much discussion among political Economists.

It cannot be doubted that a paper currency rigidly limited in its quantity to purposes absolutely necessary, may be made equal & even superior in

[1] Williams submitted a pamphlet on the causes of the commercial depression and a plan for reforming the currency.—*Mad. MSS.*

value to specie. But experience does not favor a reliance on such experiments. Whenever the paper has not been convertible into specie, and its quantity has depended on the policy of the Gov.t a depreciation has been produced by an undue increase, or an apprehension of it. The expedient suggested in the pamphlet has the advantage of tying up the hands of the Gov.t but besides the possibility of legislative interferences, bursting the fetters, a discretion vested in a few hands over the Currency of the nation, & of course over the legal value of its property, is liable to powerful objections; and tho' confined to a range of 5 per C.t, w.d have still room for a degree of error or abuse not a little formidable. The idea also of making foreign currency depending on a foreign will, and the balance of trade always varying, and at no time reducible to certainty & precision, standards for a nat.l Currency w.d not easily be admitted.

I am sensible Sir that these observations must have been included in your examination of the subject, and that they are to be regarded in no other light than as an expression of the respect & acknowledgment, which I pray you to accept for your polite Communication.

TO JAMES MONROE.[1]

MONTPLR., Mar., 1820

DR. SIR,—My nephew R. L. Madison has turned

[1] From the original kindly loaned by Fredk. D. McGuire, Esq., of Washington.

his thoughts to the new acquisition expected from Spain on our S. Frontier and wishes an official situation there which may be convenient for the time and improve his future prospects for a growing family. The reluctance I feel in speaking on all such occasions is heightened in this by the personal relation which may be supposed to bias me. Leaving the other sources there for the more general information requisite, I will not permit myself to say more than that I consider him as not deficient in talents and that to these have been added a tolerably good education. However agreeable it must of course be to me to see his interests promoted, I can neither expect nor wish it farther than his pretensions may bear the test applied to those of others and those that public considerations will authorize.

TO J. Q. ADAMS. MAD. MSS.

MONTPL^{R}, June 13, 1820

D^{R} SIR,—I have rec^{d} & return my thanks for your polite favor accompanying the Copy of the printed Journal of the Federal Convention transmitted in pursuance of a late Resolution of Congress.

In turning over a few pages of the Journal, which is all I have done a casual glance caught a passage which erroneously prefixed my name to y^{e} proposition made on the 7, day of Sep^{r} for making a Council of six members a part of the Executive branch of the Gov^{t}. The proposition was made by Col. George Mason one of the Virg^{a} delegates, & seconded by

D^r^ Franklin.[1] I cannot be mistaken in the fact; For besides my recollection which is sufficiently distinct on the subject, my notes contain the observations of each in support of the proposition. As the original Journal according to my extract from it, does not name the mover of y^e^ prop^n^ the error, I presume must have had its source in some of the extrinsic communications to you, unless indeed it was found in some of the separate papers of the Secretary of the Convention, or is to be ascribed to a copying pen. The degree of symphony in the two names Madison & Mason may possibly have contributed to the substitution of the one for the other.

This explanation having a reference to others as well as myself, I have thought it w^d^ be neither improper nor unacceptable. Along with it I renew the assurance of my high esteem and cordial resp^ts^.

TO JACOB DE LA MOTTA. MAD. MSS.

MONTPELLIER, Aug., 1820

SIR,—I have received your letter of the 7th inst. with the Discourse delivered at the Consecration of the Hebrew Synagogue at Savannah, for which you will please to accept my thanks.

The history of the Jews must forever be interesting. The modern part of it is, at the same time so little generally known, that every ray of light on the subject has its value.

Among the features peculiar to the Political

[1] See *ante*, Vol. IV., p. 396.

system of the U. States, is the perfect equality of rights which it secures to every religious Sect. And it is particularly pleasing to observe in the good citizenship of such as have been most distrusted and oppressed elsewhere, a happy illustration of the safety & success of this experiment of a just & benignant policy. Equal laws protecting equal rights, are found as they ought to be presumed, the best guarantee of loyalty & love of country; as well as best calculated to cherish that mutual respect & good will among Citizens of every religious denomination which are necessary to social harmony and most favorable to the advancement of truth. The account you give of the Jews of your Congregation brings them fully within the scope of these observations.

I tender you, Sir, my respects & good wishes

TO JAMES MONROE. MAD. MSS.

MONTPELLIER, NOV. 19, 1820

D^R^ SIR,—Yesterday's mail brought me your favor of the 16th, with a copy of your message; the only one which reached me; no newspaper containing it having come to hand.

The view you have taken of our public affairs cannot but be well received at home, and increase our importance abroad. The State of our finances is the more gratifying as it so far exceeds the public hopes. I infer from the language of your letter that the contest for the Chair terminated in favor of

Mr. Taylor, and that it manifested a continuance of the spirit which connected itself with the Missouri question at the last session.[1] This is much to be regretted, as is the clause in the constitution of the new State, which furnishes a text for the angry & unfortunate discussion. There can be no doubt that the clause, if against the Constitution of the U. S., would be a nullity; it being impossible for congress, with, more than without, a concurrence of New or old members of the Union, to vary the political equality of the States, or their constitutional relations to each other or to the whole. But it must, to say the least, be an awkward precedent, to sanction the Constitution of the New State containing a clause at variance with that of the U. S. even with a declaration that the clause was a nullity, and the awkwardness might become a very serious perplexity if the admission of the New State into the Union, and of its Senators & Representatives into Congress, & their participation in the acts of the latter, should be followed by a determination of Missouri to remain as it is rather than accede to an annulment of the obnoxious clause. Would it not be a better course to suspend the Admission until the people of Missouri could amend their constitution; provided their so doing would put an end to the controversy and produce a quiet admission at the ensuing session. Or if the objections to this course

[1] John W. Taylor, of New York, was elected speaker. The debate on the question of the admission of Missouri began November 23d.—*Annals of Congress*, 16th Cong., 2d Sess., p. 453.

be insuperable; may it not deserve consideration, whether the terms of the clause, would not be satisfied by referring the authority it gives, to the case of free people of colour *not Citizens* of other States. Not having the Constitution of Missouri at hand, I can form no opinion on this point. But a right in the States to inhibit the entrance of that description of coloured people, it may be presumed, would be as little disrelished by the States having no slaves, as by the States retaining them. There is room also for a more critical examination of the Constitutional meaning of the term "Citizens" than has yet taken place; and of the effect of the various civil disqualifications applied by the laws of the States to free people of colour.

I do not recollect that Mr. Correa had any direct or explicit conversation with me on the subject between him & the Gov.t. It is possible that my view of it might have been inferred from incidental observations; but I have no recollections leading me to the supposition; unless an inference was made from a question touched on concerning the precise criterion between a Civilized and uncivilized people, which had no connection, in my mind with his diplomatic transactions. What may have passed with Mr. Jefferson I know not.

I find that Mr. Tench Coxe is desirous of some *profitable mark* of the confidence of the Gov.t for which he supposes some opportunities are approaching; and with that view, that you should be reminded

of his public career.[1] I know not what precise object he has in his thoughts, nor how far he may be right in anticipating an opening for its attainment; and I am aware both of your own knowledge of his public services, and of your good dispositions towards him. I feel an obligation, nevertheless, to testify in his behalf, that from a very long acquaintance with him, and continued opportunities of remarking his political course, I have ever considered him among the most strenuous & faithful laborers for the good of his Country. At a very early period he was an able defender of its commercial rights & interest. He was one of the members of the convention at Annapolis. His pen was indefatigable in demonstrating the necessity of a new form of Gov.t for the nation; & he has steadfastly adhered, in spite of many warping considerations, to the true principles and policy on which it ought to be administered. He has also much merit in the active & efficient part he had in giving impulse to the Cotton cultivation, & other internal interests; and I have reason to believe that his mind & his pen continue to be occupied with subjects closely connected with the public welfare. With these impressions of the services he has rendered, I cannot but own, that any provision that could be proper in itself, & contribute to make his advanced age more comfortable than it otherwise might be, would afford me real pleasure. Of its practicability I do not presume to judge.

[1] Coxe was not appointed. He died in 1824 aged seventy years.

In looking over the bundle of my letters to Mr. Jones I find one dated in Decr, 1780, containing a statement of what passed in the old Congress relative to the proposed cession of the Missippi to Spain, corresponding *precisely* with my recollection of it as explained to you[1] I was disappointed in finding it limited to that year. My correspondence ran through a much longer period of which I have proofs on hand, and from the tenor of the above letters, & my intimacy with him, I have no doubt that my communications were often of an interesting character. Perhaps the remaining letters or a part of them may have escaped your search. Will you be so good as to renew it whenever & wherever the convenient opportunity may admit?

What is become of the Secret journals of the old Congress, & when will the press give them to the public?

A fever of the Typhus denomination, which has for some months been rambling in this district of Country, has lately found its way to this spot. Out of 14 patients within my precincts 5 have died, 2 only have perfectly recovered, & among the rest the major number are very ill. New Cases also are almost daily occurring. I have sustained a heavy loss in a young fellow who was educated in Washington a cook, & was becoming moreover a competent Gardener. I am suffering also much from the protracted illness of the man charged with my

[1] The letter is dated November 25, 1780.—*Ante*, Vol. I., p. 101.

farming business, which exposes the several crops not yet secured to great neglect & waste.

We have heard nothing particularly of Mrs. Monroe's health, which we hope has been fully restored. We have the same hope as to Mr. Gouverneur, who Mr. Hay informed me was dangerously ill. With our best wishes for you all, be assured of my affectionate respects.

TO MARQUIS DE LA FAYETTE. MAD. MSS.

MONTPELLIER, Nov^{r} 25, 1820

I have received, my dear friend, your kind letter of July 22, inclosing your printed opinion on the Election project. It was very slow in reaching me.

I am very glad to find, by your letter, that you retain, undiminished the warm feelings of friendship so long reciprocal between us; and, by your "opinion," that you are equally constant to the cause of liberty so dear to us both. I hope your struggles in it will finally prevail in the full extent required by the wishes, and adapted to the exigencies of your Country.

We feel here all the pleasure you express at the progress of reformation on your Continent. Despotism can only exist in darkness, and there are too many lights now in the political firmament, to permit it to reign any where, as it has heretofore done, almost every where. To the events in Spain & Naples has succeeded already, an auspicious epoch in Portugal. Free States seem indeed to be propagated in Europe, as rapidly as new States are on this

side of the Atlantic: Nor will it be easy for their births or their growths if safe from dangers within to be strangled by external foes, who are not now sufficiently united among themselves, are controuled by the aspiring sentiments of their people, are without money of their own, and are no longer able to draw on the foreign fund which has hitherto supplied their belligerent necessities.

Here, we are, on the whole, doing well, and giving an example of a free system, which I trust will be more of a Pilot to a good Port, than a Beacon warning from a bad one. We have, it is true, occasional fevers, but they are of the transient kind flying off thro' the surface, without preying on the vitals. A Gov.t like ours has so many safety-valves giving vent to overheated passions, that it carries within itself a relief ag.st the infirmities from which the best of human Institutions cannot be exempt. The subject which ruffles the surface of public affairs most at present, is furnished by the transmission of the "Territory" of Missouri from a state of nonage to a maturity for self-Gov.t and for a membership in the Union. Among the questions involved in it, the one most immediately interesting to humanity is the question whether a toleration or prohibition of slavery Westward of the Mississippi, would most extend its evils. The humane part of the argument against the prohibition, turns on the position, that whilst the importation of slaves from abroad is precluded, a diffusion of those in the Country, tends at once to meliorate their actual condition, and to facilitate

their eventual emancipation. Unfortunately, the subject which was settled at the last session of Congress, by a mutual concession of the parties, is reproduced on the Arena, by a clause in the Constitution of Missouri, distinguishing between free persons of Colour, and white persons; and providing that the Legislature of the new State shall exclude from it the former. What will be the issue of the revived discussion is yet to be seen. The case opens the wider field as the Constitutions & laws of the different States are much at variance in the civic character given to free people of colour; those of most of the States, not excepting such as have abolished slavery, imposing various disqualifications which degrade them from the rank & rights of white persons. All these perplexities develope more & more the dreadful fruitfulness of the original sin of the African trade.

I will not trouble you with a full Picture of our economics. The cessation of neutral gains, the fiscal derangements incident to our late war, the inundation of foreign merchandizes since, and the spurious remedies attempted by the local authorities, give to it some disagreeable features. And they are made the more so, by a remarkable downfal in the prices of two of our great Staples Breadstuffs & Tobacco, carrying privations to every man's door, and a severe pressure to such as labour under debts for the discharge of which, they relied on crops & prices which have failed. Time however will prove a sure Physician for these maladies. Adopt-

ing the remark of a British Senator applied with less justice to his Country, at the commencement of the revolutionary Contest, we may say, that "altho' ours may have a sickly countenance, we trust she has a strong Constitution."

I see that the bickerings between our Govts. on the point of tonnage has not yet been terminated. The difficulty, I should flatter myself, cannot but yield to the spirit of amity, & the principles of reciprocity entertained by the parties.

You would not, believe me, be more happy to see me at lagrange, than I should be to see you at Montpr. where you wd. find as zealous a farmer, tho' not so well cultivated a farm as Lagrange presents. As an interview can hardly be expected to take place at both, I may infer from a comparison of our ages a better chance of your crossing the Atlantic than of mine. You have also a greater inducement in the greater number of friends whose gratifications would at least equal your own. But if we are not likely to see one another, we can do what is the next best, communicate by letter what we wd. most wish to express in person, and particularly can repeat those sentiments of affection & esteem, which, whether expressed or not, will ever be most sincerely felt by your old & steadfast friend.

TO FRANCIS CORBIN.[1]

November 26, 1820

Dr Sir,—I had the pleasure of receiving, a few

[1] From Madison's *Works* (Cong. Ed.). Corbin's letter said that slav-

days ago, your favor post-marked the 18th, in lieu of the greater pleasure with which I should have received you *in propria persona*. I am sorry you so readily yielded to the consideration which deprived us of it in September. The addition of your company would have been felt no otherwise than as an ingredient highly acceptable to that you would have met here, as well as to Mrs. M. and myself. For a day or two, indeed, you might have been involved in the common distress occasioned by the hopeless and expiring condition of the little son of Mrs. Scott; but even that drawback might not have taken place within the period of your visit.

You complain of the times, which are certainly very hard; but you have a great abatement of your comparative suffering in your paper funds, notwithstanding the suspension of their current productiveness. This is but a *lucrum cessans*. How many are feeling the *damnum emergens* also! Besides, in the event of a necessary sale of property, (certainly not your case,) the paper property is the only sort that can find a tolerable and certain market. Whilst I condole with you, therefore, on the hardships in which you participate, I must congratulate you on your escape from a portion which afflicts others. The general condition of these is truly lamentable. If debtors to the Banks, nothing can relieve them but a renewal of discounts, not to be looked for: if owing debts, for discharging

ery and farming were incompatible and that he was thinking of emigrating to the North.—*Mad. MSS.*

which they have relied on crops or prices, which have failed, they have no resource but in the sale of property, which none are able to purchase. With respect to all these, the times are hard indeed; the more so, as an early change is so little within the reach of any fair calculation.

I do not mean to discuss the question how far *slavery* and *farming* are incompatible. Our opinions agree as to the evil, moral, political, and economical, of the former. I still think, notwithstanding, that under all the disadvantages of slave cultivation, much improvement in it is practicable. Proofs are annually taking place within my own sphere of observation; particularly where slaves are held in small numbers, by good masters and managers. As to the very wealthy proprietors, much less is to be said. But after all, (protesting against any inference of a disposition to underrate the evil of slavery,) is it certain that in giving to your wealth a new investment, you would be altogether freed from the cares and vexations incident to the shape it now has? If converted into paper, you already feel some of the contingencies belonging to it; if into commercial stock, look at the wrecks every where giving warning of the danger. If into large landed property, where there are no slaves, will you cultivate it yourself? Then beware of the difficulty of procuring faithful or complying labourers. Will you dispose of it in leases? Ask those who have made the experiment what sort of tenants are to be found where an ownership of the soil is so attainable. It

has been said that America is a country for the poor, not for the rich. There would be more correctness in saying it is the country for both, where the latter have a relish for free government; but, proportionally, more for the former than for the latter.

Having no experience on the subject myself, I cannot judge of the numerical point at which congratulations on additional births cease to be appropriate. I hope that your 7th son will in due time prove that in his case, at least, they were amply called for; and that Mrs. C. and yourself may long enjoy the event as an addition to your happiness.

Mrs. M. unites with me in this, and in every assurance of respect and good wishes to you both.

TO JAMES MONROE. MAD. MSS.

MONTPELLIER, Decr 28, 1820

DEAR SIR,—I have received your two favors of the 10th & 23d inst. The prospect of a favorable issue to the difficulties with Spain, is very agreeable. I hope the ratification will arrive without Clogs on it; and that the acquisition of Florida will give no new stimulus to the Spirit excited by the case of Missouri. I am glad to learn that a termination of this case, also is not despaired of. If the new State is to be admitted with a proviso, none better occurs than a declaration that its admission is not to imply an opinion in Congress that its Constitution will be less subject to be tested & controuled by the Constitution of the U. S. than if formed after its

admission, or than the Constitutions of other States now members of the Union.

It is a happy circumstance that the discussions renewed by the offensive clause introduced by Missouri, are marked by such mitigated feelings in Congress. It argues well as to the ultimate effect which you anticipate. The spirit and manner of conducting the opposition to the new State, with the palpable efforts to kindle lasting animosity between Geographical divisions of the nation will have a natural tendency, when the feverish crisis shall have passed, to reunite those who never differed as to the essential principles and the true policy of the Gov^t. This salutary reaction will be accelerated by candor & conciliation on one side appealing to like dispositions on the other; & it would be still farther promoted by a liberality with regard to all depending measures, on which local interests may seem to be somewhat at variance, and may perhaps be so for a time.

Your dispositions towards Mr. T. Coxe are such as I had counted on. I shall regret, if it so happen, that nothing can properly be done for him. I feel a sincere interest in behalf of Doct Eustis.[1] The expedient at which you glance would I suppose be in itself an appropriate provision; but I am sensible of the delicacy of the considerations which I perceive weigh with you. I wish he could have been

[1] William Eustis was elected to Congress from Massachusetts in 1820 and served till 1823, when he was elected Governor of Massachusetts, holding the office until his death in 1825.

made the Gov.r of his State. It would have closed his public career with the most apt felicity.

Is not the law vacating periodically the described offices an encroachment on the Constitutional attributes of the Executive?[1] The creation of the office is a legislative act, the appointment of the officer, the joint act of the President & Senate; the tenure of the Office, (the judiciary excepted,) is the pleasure of the P. alone; so decided at the commencement of the Gov.t so acted on since, and so expressed in the commission. After the appointment has been made neither the Senate nor H. of Rep.s have any power relating to it; unless in the event of an impeachment by the latter, and a judicial decision by the former; or unless in the exercise of a legislative power by both, abolishing the office itself, by which the officer indirectly looses his place; and

[1] The act of May 15, 1820, "to limit the term of office of certain officers," provided that district attorneys, collectors of customs, naval officers, surveyors of customs, navy agents, receivers of public moneys for lands, registers of the land offices, paymasters in the army, the apothecary general, the assistant apothecaries general and the commissary general of purchases should be appointed for a term of four years, but should be removable at pleasure.

On this subject Madison wrote to Jefferson, January 7, 1821:

In the late views taken by us, of the Act of Congress, vacating periodically the Executive offices, it was not recollected, in justice to the President, that the measure was not without precedents. I suspect however that these are confined to the Territorial establishments, where they were introduced by the Old Cong.s in whom all powers of Gov.t were confounded; and continued by the new Congress, who have exercised a like confusion of powers within the same limits. Whether the Congressional code contains any precedent of a like sort more particularly misleading the President I have not fully examined. If it does, it must have blindly followed the territorial examples.—*Mad. MSS.*

even in this case, if the office were abolished merely to get rid of the tenant, and with a view, by its reestablishment, to let in a new one, on whom the Senate would have a negative, it would be a virtual infringement of the constitutional distribution of the powers of Government. If a law can displace an officer at every period of 4 years, it can do so at the end of every year, or at every session of the Senate, and the tenure will then be the pleasure of the Senate, as much as of the President, & not of the P. alone. Other very interesting views might be taken of the subject. I never read if I ever saw the debates on the passage of the law. Nor have I looked for precedents which may have countenanced it. I suspect that these are confined to the Territories, that they had their origin in the ordinance of the old Congress in whom all powers of Gov.t were confounded; and that they were followed by the New Cong.s who have exercised a very undefined and irregular authority within the Territorial limits; the Judges themselves being commissioned from time to time, and not during good behaviour, or the continuance of their *offices*.

TO RICHARD RUSH. MAD. MSS.

Apl 21, 1821

DEAR SIR,—Your favor of Nov.r 15, came duly to hand, with Mr. Ridgeley's farming Pamphlet; for which I return my thanks.

The inflexibility of G. B. on the points in question

with the U. S. is a bad omen for the future relations of the parties. The present commercial dispute, tho' productive of ill humor will shed no blood. The same cannot be said of Impressments & blockades.

I have lately rec^{d} also Mr. Godwin's attack on Malthus, which you were so good as to forward. The work derives some interest from the name of the Author and the singular views he has taken of the subject. But it excites a more serious attention by its tendency to disparage abroad the prospective importance of the U. S. who must owe their rapid growth to the principle combated.[1]

In this Country the fallacies of the Author will be smiled at only unless other emotions should be excited by the frequent disregard of the probable meaning of his opponent, and by the harshness of comments on the moral scope of his doctrine. Mr. G. charges him also with being dogmatical. Is he less so himself? and is not Mr. G. one of the last men who ought to throw stones at Theorists? At the moment of doing it too he introduces one of the boldest speculations in anticipating from the progress of chemistry an artificial conversion of the air the water & earth into food for man of the natural flavour and colour.

My memory does not retain all the features of Mr. Malthus's System. He may have been un-

[1] See letter to Jefferson June 19, 1786, *ante*, Vol. II., p. 246. The work under discussion was William Godwin's *Of Population; an Enquiry Concerning the Power of Increase in the Numbers of Mankind, being an Answer to Mr. Malthus's Essay on the Subject.* London, 1820.

guarded in his expressions, & have pushed some of his notions too far. He is certainly vulnerable in assigning for the increase of human food, an arithmetical ratio. In a Country thoroughly cultivated, as China is said to be, there can be *no* increase. And in one as partially cultivated, and as fertile as the U. S. the increase may *exceed* the geometrical ratio. A surplus beyond it, for which a foreign demand has failed, is a primary cause of the present embarrassments of this Country.

The two cardinal points on which the two Authors are at issue, are 1. the prolific principle in the human race. 2. its actual operation, particularly in the U. S. Mr. G. combats the extent of both.

If the principle could not be proved by direct facts, its capacity is so analogous to what is seen throughout other parts of the animal as well as vegetable domain, that it would be a fair inference. It is true indeed that in the case of vegetables on which animals feed, and of animals the food of other animals, a more extensive capacity of increase might be requisite than in the Human race. But in this case also it is required, over and above the degree sufficient to repair the ordinary wastes of life, by two considerations peculiar to man: one that his reason can add to the natural means of subsistence for an increased number, which the instinct of other animals cannot; the other, that he is the only animal that destroys his own species.

Waiving however the sanction of analogy, let the

principle be tested by facts, either stated by Mr. G. or which he cannot controvert.

He admits that Sweden has doubled her numbers, in the last hundred years, without the aid of emigrants. Here then there must have been a prolific capacity equal to an increase in ten centuries from 2 millions to 1000 mill^{s}. If Sweden were as populous ten Centuries ago as now, or should not in ten Centuries to come arrive at a thousand millions, must not 998 mill^{s} of births have been prevented; or that number of infants have perished? And from what causes?

The two late enumerations, in England which shew a rate of increase there much greater than in Sweden are rejected by Mr. G. as erroneous. They probably are so; tho' not in the degree necessary for his purpose. He denies that the population increases at all. He even appeals with confidence to a comparison of what it has been with what it is at present as proving a decrease.

There being no positive evidence of the former numbers and none admitted by him of the Present, resort must be had to circumstantial lights; and these will decide the question with sufficient certainty.

As a general rule it is obvious that the quantity of food produced in a country determines the actual extent of its population. The number of people cannot exceed the quantity of food, and this will not be produced beyond the consumption. There are exceptions to the rule; as in the case of the U. S. which export food, and of the W. Indies which import it.

Both these exceptions however favor the supposition that there has been an increase of the English population: England adding latterly imported food to its domestic stock, which at one period it diminished by exportation. The question to be decided is whether the quantity of food produced the true measure of the population consuming it, be greater or less now than heretofore.

In the savage state where wild animals are the chief food, the population must be the thinnest. Where reared ones are the chief food, as among the Tartars, in a pastoral State, the number may be much increased. In proportion as grain is substituted for animal food a far greater increase may take place. And as cultivated vegetables, & particularly roots, enter into consumption, the mass of subsistence being augmented, a greater number of consumers, is necessarily implied.

Now, it will not be pretended, that there is at present in England more of forest, and less of Cultivated ground than in the feudal or even much later periods. On the contrary it seems to be well understood that the opened lands have been both enlarged & fertilized; that bread has been substituted for flesh; and that vegetables, particularly roots have been more & more substituted for both. It follows that the aggregate food raised & consumed now, being greater than formerly, the number who consume it, is greater also.

The Report to the Board of Agriculture quoted by Mr. G. coincides with this inference. The

Animal food of an individual which is the smaller part of it, requires, according to this authority, 2 acres of ground; all the other articles $1\frac{3}{4}$ of an acre only. The report states that a horse requires four acres. It is probable that an ox requires more, being fed less on grain & more on Grass.

It may be said that Horses which are not eaten are now used instead of oxen which were. But the horse as noted is supported by fewer acres than the ox; and the oxen superseded by the horses, form but a small part of the eatable Stock to which they belong. The inference therefore can at most be but slightly qualified by this innovation.

The single case of Ireland ought to have warned Mr. G. of the error he was maintaining. It Seems to be agreed that the population there has greatly increased of late years; altho' it receives very few if any emigrants; and has sent out numbers, very great numbers, as *Mr. G. must suppose*, to the U. S.

In denying the increase of the Amⁿ population, from its own stock, he is driven to the most incredible suppositions, to a rejection of the best established facts, and to the most preposterous estimates & calculations.

He ascribes the rapid increase attested by our periodical lists, wholly to emigrations from Europe; which obliged him to suppose that from 1790, to 1810 150 thousand persons were annually transported; an extravagance which is made worse by his mode of reducing the nº necessary to one half; and he catches at little notices of remarkable numbers

landed at particular ports, in particular seasons; as if these could be regarded as proofs of the average arrivals for a long series of years, many of them unfavorable for such transmigrations. In the year 1817, in which the emigrants were most numerous, according to Seybert, they did not in the ten Principal ports where with few if any exceptions they are introduced, exceed 22,240; little more than $\frac{1}{7}$ of the average annually assumed.

Were it even admitted that our population is the result altogether of emigrations from Europe, what w^{d} Mr. G. gain by it?

The Census for 1820 is not yet compleated. There is no reason however, to doubt that it will swell our numbers to about ten millions. In 1790 the population was not quite four millions. Here then has been an increase of six millions. Of these six five millions will have been drawn from the population of G. B. & Ireland. Have the numbers there been reduced accordingly? Then they must have been 30 years ago, greater by 5 millions than at this time. Has the loss been replaced? Then, as it has not been by emigrants, it must have been by an effect of the great principle in question. Mr. G. may take his choice of the alternatives.

It is worth remarking that N. England which has sent out such continued swarms to other parts of the Union for a number of years, has continued at the same time, as the Census shews to increase in population, altho' it is well known that it has rec^{d} comparatively very few emigrants from any

quarter; these preferring places less inhabited for the same reason that determines the course of migrations from N. England.

The appeal to the case of the black population in the U. S. was particularly unfortunate for the reasoning of Mr. G. to which it gives the most striking falsification.

Between the years 1790 & 1810 the number of slaves increased from 694,280 to 1,165,441. This increase at a rate nearly equal to that of the Whites, surely was not produced by *emigrants* from Africa. Nor could any part of it have been imported, (except 30 or 40,000[1] into S. Carolina & Georgia,) the prohibition being every where strictly enforced throughout that period. Louisiana indeed brought an addition amounting in 1810 to 37,671. This nº however (to be reduced by the slaves carried thither from other States prior to 1810) may be regarded as overbalanced by emancipated blacks & their subsequent offspring. The whole number of this description in the Census of 1810, amounts to 186,446.

The evidence of a natural and rapid increase of the Blacks in the State of Virginia is alone conclusive on the subject. Since the Epoch of Independence the importation of slaves has been uniformly prohibited, and the spirit of the people concurring with the policy of the law, it has been carried fully into execution. Yet the number of slaves increased from 292,627 in 1790 to 392,518 in 1810;

[1] See for exact nº Senator Smiths speech of last session.—*Madison's Note.*

altho' it is notorious that very many have been carried from the State by external purchases and migrating masters. In the State of Maryland to the North of Virginia whence alone it could be surmised that any part of them could be replaced, there has been also an increase.

Mr. G. exults not a little (p. 420—2) in the detection of error in a paper read by Mr. W. Barton in 1791 to the Philosophical Society at Phild[a]. I have not looked for the paper; but from the account of it given by Mr. G. a strange error was committed by Mr. B. not however in the false arithmetic blazoned by Mr. G., but by adding the number of deaths to that of births in deducing the Productiveness of marriages in a certain Parish in Massachusetts. But what is not less strange than the lapsus of Mr. B. is that his critic should overlook the fact on the face of the paper as inserted in his own Page, that the population of the Parish had doubled in 54 years, in spite of the probable removals from an old parish to newer settlements; And what is strangest of all, that he should not have attended to the precise statement in the record, that the number of births within the period exceeded the number of deaths, by the difference between 2,247 and 1,113. Here is the most demonstrable of all proofs of an increasing population unless a Theoretical zeal should suppose that the Pregnant women in the neighbourhood made lying in visits to Hingham, or that its sick inhabitants chose to have their dying eyes closed elsewhere.

Mr. G. has not respected other evidence in his hands, which ought to have opened his eyes to the reality of an increasing population in the U. S. In the population list of Sweden, in the authenticity of which he fully acquiesces as well as in the Census of the U. S. the authenticity of which he does not controvert, there is a particular column for those under ten years of Age. In that of Sweden, the number is to the whole population, as 2,484 to 10,000 which is less than $\frac{1}{4}$. In that of the U. S. the number is as 2,016,704 to 5,862,096, which is more than $\frac{1}{3}$. Now Mr. G. refers (p. 442) to the proportion of the ungrown to the whole population, as testing the question of its increase. He admits & specifies the rate at which the population of Sweden increases. And yet with this evidence of a greater increase of the population of the U. S. he contends that it does not increase at all. An attempt to extricate himself by a disproportion of children or of more productive parents emigrating from Europe, would only plunge him the deeper into contradictions & absurdities.

Mr. G. dwells on the Indian Establishment at Paraguay by the Jesuits, which is said not to have increased as a triumphant disproof of the prolific principle. He places more faith in the picture of the establishment given by Raynal than is due to the vivid imagination of that Author, or than the Author appears to have had in it himself. For he rejects the inference of Mr. G. and reconciles the failure to increase with the power to increase by

assigning two causes for the failure; the small-pox, and the exclusion of individual Property. And he might have found other causes, in the natural love of indolence till overcome by avarice & vanity motives repressed by their religious discipline; in the pride of the men, retaining a disdain of agricultural labour; and in the female habit of prolonging for several years the period of keeping children to the breast. In no point of view can a case marked by so many peculiar circumstances & these so imperfectly known, be allowed the weight of a precedent.

Mr. G. could not have given a stronger proof of the estrangement of his ideas from the Indian character & modes of life than by his referring to the Missouri Tribes, which do not multiply, "altho' they cultivate corn." His fancy may have painted to him fields of Wheat, cultivated by the Plough & gathered into Barns, as a provision for the year. How w^d he be startled at the sight of little patches of Maize & squashes, stirred by a piece of Wood, and that by the Squaws only; the hunters & warriors spurning such an occupation, & relying on the fruits of the Chase for the support of their Wigwams? "Corn Eaters" is a name of reproach given by some tribes to others beginning under the influence of the Whites to enlarge their cultivated spots.

In going over Mr. G^s volume, these are some of the remarks which occurred; and in thanking you for it, I have made them supply the want of more interesting materials for a letter. If the heretical Work

should attract conversations in which you may be involved, some of the facts, which you are saved the trouble of hunting up, may rebut misstatements from misinformed friends or illiberal opponents of our Country.

You have not mentioned the cost of Godwin's book or the pamphlet of Mr. Rigby. I suspect that they overgo the remnant of the little fund in your hands. If so let me provide for it. You will oblige me also by forwarding with its cost, the Book Entitled "The apocryphal New Testament translated from the Original Tongues," "printed for W^m. Hone Ludgate Hill."

TO SPENCER ROANE. MAD. MSS.

MONTP^R, May 6, 1821

DEAR SIR,—I rec^d more than two weeks ago, your letter of Ap^l 17. A visit to a sick friend at a distance, with a series of unavoidable attentions have prevented an earlier acknowledgment of it.

Under any circumstances I should be disposed rather to put such a subject as that to which it relates into your hands than to take it out of them. Apart from this consideration, a variety of demands on my time would restrain me from the task of unravelling the arguments applied by the Supreme Court of the U. S. to their late decision.[1] I am

[1] The case referred to is *Cohens v. Virginia*. Chief Justice Marshall handed down the decision, which is highly federal in tone.—*6 Wheaton*, 257.

Roane wrote five articles under the *nom de plume* Algernon Sydney,

particularly aware moreover that they are made to rest not a little on technical points of law, which are as foreign to my studies as they are familiar to yours.

It is to be regretted that the Court is so much in the practice of mingling with their judgments pronounced, comments & reasonings of a scope beyond them; and that there is often an apparent disposition to amplify the authorities of the Union at the expence of those of the States. It is of great importance as well as of indispensable obligation, that the constitutional boundary between them should be impartially maintained. Every deviation from it in practice detracts from the superiority of a Chartered over a traditional Gov^{t} and mars the experiment which is to determine the interesting Problem whether the organization of the Political system of the U. S. establishes a just equilibrium; or tends to a preponderance of the National or the local powers, and in the latter case, whether of the national or of the local.

A candid review of the vicissitudes which have marked the progress of the General Gov^{t} does not preclude doubts as to the ultimate & fixed character of a Political Establishment distinguished by so novel & complex a mechanism. On some occasions the advantage taken of favorable circumstances gave an impetus & direction to it which seemed to threaten subversive encroachments on the rights

against the position of the Supreme Court. They were published in the *Richmond Enquirer* beginning May 25, 1821.

& authorities of the States. At a certain period we witnessed a spirit of usurpation by some of these on the necessary & legitimate functions of the former. At the present date, theoretic innovations at least are putting new weights into the scale of federal sovereignty which make it highly proper to bring them to the Bar of the Constitution.

In looking to the probable course and eventual bearing of the compound Gov^t^ of our Country, I cannot but think that much will depend not only on the moral changes incident to the progress of society; but on the increasing number of the members of the Union. Were the members very few, and each very powerful, a feeling of self-sufficiency would have a relaxing effect on the bands holding them together. Were they numerous & weak, the Gov. over the whole would find less difficulty in maintaining & increasing subordination. It happens that whilst the power of some is swelling to a great size, the entire number is swelling also. In this respect a corresponding increase of centripetal & centrifugal forces, may be equivalent to no increase of either.

In the existing posture of things, my reflections lead me to infer that whatever may be the latitude of Jurisdiction assumed by the Judicial Power of the U. S. it is less formidable to the reserved sovereignty of the States than the latitude of power which it has assigned to the National Legislature; & that encroachments of the latter are more to be apprehended from impulses given to it by a majority of

the States seduced by expected advantages, than from the love of Power in the Body itself, controuled as it *now* is by its responsibility to the Constituent Body.

Such is the plastic faculty of Legislation, that notwithstanding the firm tenure which judges have on their offices, they can by various regulations be kept or reduced within the paths of duty; more especially with the aid of their amenability to the Legislative tribunal in the form of impeachment. It is not probable that the Supreme Court would long be indulged in a career of usurpation opposed to the decided opinions & policy of the Legislature.

Nor do I think that Congress, even seconded by the Judicial Power, can, without some change in the character of the nation, succeed in *durable* violations of the rights & authorities of the States. The responsibility of one branch to the people, and of the other branch to the Legislatures, of the States, seem to be, in the present stage at least of our political history, an adequate barrier. In the case of the alien & sedition laws, which violated the general *sense* as well as the *rights* of the States, the usurping experiment was crushed at once, notwithstanding the co-operation of the federal Judges with the federal laws.

But what is to controul Congress when backed & even pushed on by a majority of their Constituents, as was the case in the late contest relative to Missouri, and as may again happen in the constructive power relating to Roads & Canals? Nothing within the

pale of the Constitution but sound arguments & conciliatory expostulations addressed both to Congress & to their Constituents.

On the questions brought before the Public by the late doctrines of the Supreme Court of the U. S. concerning the extent of their own powers, and that of the exclusive jurisdiction of Congress over the ten miles square and other specified places, there is as yet no evidence that they express either the opinions of Congress or those of their Constituents. There is nothing therefore to discourage a development of whatever flaws the doctrines may contain, or tendencies they may threaten. Congress if convinced of these may not only abstain from the exercise of Powers claimed for them by the Court, but find the means of controuling those claimed by the Court for itself. And should Congress not be convinced, their Constituents, if so, can certainly under the forms of the Constitution effectuate a compliance with their deliberate judgment and settled determination.

In expounding the Constitution the Court seems not insensible that the intention of the parties to it ought to be kept in view; and that as far as the language of the instrument will permit, this intention ought to be traced in the contemporaneous expositions. But is the Court as prompt and as careful in citing and following this evidence, when agst the federal Authority as when agst that of the States? (See the partial reference of the Court to "The Federalist.")[1]

[1] "The opinion of the *Federalist* has always been considered as of

The exclusive jurisdiction over the ten miles square is itself an anomaly in our Representative System. And its object being manifest, and attested by the views taken of it, at its date, there seems a peculiar impropriety in making it the fulcrum for a lever stretching into the most distant parts of the Union, and overruling the municipal policy of the States. The remark is still more striking when applied to the smaller places over which an exclusive jurisdiction was suggested by a regard to the defence & the property of the Nation.

Some difficulty, it must be admitted may result in particular cases from the impossibility of executing some of these powers within the defined spaces, according to the principles and rules enjoined by the Constitution; and from the want of a constitutional provision for the surrender of malefactors whose escape must be so easy, on the demand of the U. States as well as of the Individual States. It is true also that these exclusive jurisdictions are in the class of enumerated powers, to w^{ch} is subjoined the "power in Congress to pass all laws necessary & proper for their execution." All however that could be exacted by these considerations would be that the means of execution should be of the most obvious & essential kind; & exerted in the ways as

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great authority. It is a complete commentary on our constitution, and is appealed to by all parties in the questions to which that instrument has given birth. Its intrinsic merit entitles it to this high rank; and the part two of its authors performed in framing the constitution, put it very much in their power to explain the views with which it was framed."—*6 Wheaton*, 294.

little intrusive as possible on the powers and police of the States. And, after all, the question would remain whether the better course would not be to regard the case as an omitted one, to be provided for by an amendment of the Constitution. In resorting to legal precedents as sanctions to power, the distinctions should ever be strictly attended to, between such as take place under transitory impressions, or without full examination & deliberation, and such as pass with solemnities and repetitions sufficient to imply a concurrence of the judgment & the will of those, who having granted the power, have the ultimate right to explain the grant. Altho' I cannot join in the protest of some against the validity of all precedents, however uniform & multiplied, in expounding the Constitution, yet I am persuaded that Legislative precedents are frequently of a character entitled to little respect, and that those of Congress are sometimes liable to peculiar distrust. They not only follow the example of other Legislative assemblies in first procrastinating and then precipitating their acts; but, owing to the termination of their session every other year at a fixed day & hour, a mass of business is struck off, as it were at shorthand, and in a moment. These midnight precedents of every sort ought to have little weight in any case.

On the question relating to involuntary submissions of the States to the Tribunal of the Supreme Court, the Court seems not to have adverted at all to the expository language when the Constitution

was adopted; nor to that of the Eleventh Amendment, which may as well import that it was declaratory, as that it was restrictive of the meaning of the original text. It seems to be a strange reasoning also that would imply that a State in controversies with its own Citizens might have less of sovereignty, than in controversies with foreign individuals, by which the national relations might be affected. Nor is it less to be wondered that it should have appeared to the Court that the dignity of a State was not more compromitted by being made a party agst a private person than agst a co-ordinate Party.

The Judicial power of the U. S. over cases arising under the Constitution, must be admitted to be a vital part of the System. But that there are limitations and exceptions to its efficient character, is among the admissions of the Court itself. The Eleventh Amendment introduces exceptions if there were none before. A liberal & steady course of practice can alone reconcile the several provisions of the Constitution literally at variance with each other; of which there is an example in the Treaty Power & the Legislative Power on subjects to which both are extended by the words of the Constitution. It is particularly incumbent, in taking cognizance of cases arising under the Constitution, and in which the laws and rights of the States may be involved, to let the proceedings touch individuals only. Prudence enjoins this if there were no other motive, in consideration of the impracticability of applying coercion to States

I am sensible Sir, that these ideas are too vague to be of value, and that they may not even hint for consideration anything not occurring to yourself. Be so good as to see in them at least an unwillingness to disregard altogether your request. Should any of the ideas be erroneous as well as vague, I have the satisfaction to know that they will be viewed by a friendly as well as a candid eye.

TO PETER S. DU PONCEAU. CHIC. HIST. SOC. MSS.

May, 1821

Dr. Sir,—I canot return my thanks for your address on the subject of a central seminary of Jurisprudence without offering my best wishes for the success of such an Institution.

The Citizens of the U. S. not only form one people governed by the same code of laws, in all cases falling within the range of the Federal authority, but as Citizens of the different States, are connected by a daily intercourse & by multiplying transactions, which give to all an interest in the character, & in a reciprocal knowledge of the State laws also.

It is not only desirable therefore that the national code should receive whatever improvements the cultivation of law as a science may impart but that the local codes should be improved in like manner, and a general knowledge of each facilitated by an infusion of every practicable identity through the whole.

All these objects must be promoted by an

Institution concentrating the talents of the most enlightened of the Legal profession, and attracting from every quarter the pupils most devoted to the studies leading to it.

Such an assemblage in such a position would have particular advantages for taking a comprehensive view of the local codes, for examining their coincidences and their differences, and for pointing out whatever in each might deserve to be adopted into the others, and it can not be doubted that something would be found in each worthy of a place in all.

This would be a species of consolidation having the happy tendency to diminish local prejudices, to cherish mutual confidence and to accommodate the intercourse of business between citizens of different States, without impairing the constitutional separation & Independence of the States themselves, which are deemed essential to the security of individual liberty as well as to the preservation of Republican Government.

Uniformity in the laws of the States might have another effect not without its value. These laws furnish in many cases the very principles & rules on which the decisions of the national Tribunal are to be hinged. A knowledge of them in such cases is indispensable. The difficulty of acquiring it whilst the several codes vary so much is obvious, and is a motive for imposing on the Judges of the Supreme Court of the Nation those itinerary duties which may suit neither their years nor can long be

practicable within the expanding field of them, and which moreover preclude those enriching "lucubrations" by which they might do fuller justice to themselves, fulfill the better expectations at home, and contribute the more to the national character abroad.

I rec^{d} some time ago your recommendation of Mr. [Lardner Clark] Vanuxem for the Chemical Chair in the University of Virg^{a} President Cooper has borne his testimony also in favor of Mr. Vanuxem. Nothing can yet be s^{d} on the prospect of his success, the other candidates not being yet known, and the time even of opening the University being uncertain.

TO SPENCER ROANE. MAD. MSS.

MONTPELLIER, June 29, 1821

DEAR SIR,—I have rec^{d}, and return my thanks for your obliging communication of the 20th instant. The papers of "Algernon Sidney" have given their full lustre to the arguments agst the suability of States by individuals, and agst the projectile capacity of the power of Congress within the "ten miles square." The publication is well worthy of a Pamphlet form, but must attract Public attention in any form.

The Gordian Knot of the Constitution seems to lie in the problem of collision between the federal & State powers, especially as eventually exercised by their respective Tribunals. If the knot cannot be untied by the text of the Constitution it ought not, certainly, to be cut by any Political Alexander.

I have always thought that a construction of the instrument ought to be favoured, as far as the text would warrant, which would obviate the dilemma of a Judicial rencounter or a mutual paralysis; and that on the abstract question whether the federal or the State decisions ought to prevail, the sounder policy would yield to the claims of the former.

Our Governmental System is established by a compact, not between the Government of the U. States, and the State Governments; but between the States, as sovereign communities, stipulating each with the others, a surrender of certain portions, of their respective authorities, to be exercised by a Common Gov.t and a reservation, for their own exercise, of all their other Authorities. The possibility of disagreements concerning the line of division between these portions could not escape attention; and the existence of some Provision for terminating regularly & authoritatively such disagreements, not but be regarded as a material desideratum.

Were this trust to be vested in the States in their individual characters, the Constitution of the U. S. might become different in every State, and would be pretty sure to do so in some; the State Gov.ts would not stand all in the same relation to the General Gov.t, some retaining more, others less of sovereignty; and the vital principle of equality, which cements their Union thus gradually be deprived of its virtue. Such a trust vested in the Gov.t representing the whole and exercised by its tribunals, would not be exposed to these consequences; whilst the trust

itself would be controulable by the States who directly or indirectly appoint the Trustees: whereas in the hands of the States no federal controul direct or indirect would exist the functionaries holding their appointments by tenures altogether independent of the General Gov^{t}.

Is it not a reasonable calculation also that the room for jarring opinions between the National & State tribunals will be narrowed by successive decisions sanctioned by the Public concurrence; and that the weight of the State tribunals will be increased by improved organizations, by selections of abler Judges, and consequently by more enlightened proceedings? Much of the distrust of these departments in the States, which prevailed when the National Constitution was formed has already been removed. Were they filled everywhere, as they are in some of the States, one of which I need not name, their decisions at once indicating & influencing the sense of their Constituents, and founded on united interpretations of constitutional points, could scarcely fail to frustrate an assumption of unconstitutional powers by the federal tribunals.

Is it too much to anticipate even that the federal & State Judges, as they become more & more coordinate in talents, with equal integrity, and feeling alike the impartiality enjoined by their oaths, will vary less & less also in their reasonings & opinions on all Judicial subjects; and thereby mutually contribute to the clearer & firmer establishment of the true boundaries of power, on which must depend

the success & permanency of the federal republic, the best Guardian, as we believe, of the liberty, the safety, and the happiness of men. In these hypothetical views I may permit my wishes to sway too much my hopes. I submit the whole nevertheless to your perusal, well assured that you will approve the former, if you cannot join fully in the latter.

Under all circumstances I beg you to be assured of my distinguished esteem & sincere regard.

TO JOSEPH GALES. MAD. MSS.

MONTPR. August 26, 1821

DEAR SIR,—I thank you for your friendly letter of the 20th, inclosing an extract from notes by Judge Yates, of debates in the Convention of 1787, as published in a N. Y. paper.[1] The letter did not come to hand till yesterday.[2]

If the extract be a fair sample, the work about to be published will not have the value claimed for it. Who can believe that so palpable a misstatement was made on the floor of the Convention, as that the several States were political Societies, *varying* from the *lowest* Corporation to the highest Sovereign; or that the States had vested *all* the essential rights of sovereignty in the Old Congress? This intrinsic evidence alone, ought to satisfy every candid reader

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[1] Commercial Advertiser, Aug. 18, 1821.—*Madison's note.*

[2] Gales sent the clipping with the remark: "If the whole work be of the same texture, it must be of little value, less authority."—*Mad. MSS.*

of the extreme incorrectness of the passage in question. As to the remark that the States ought to be under the controul of the Gen^{l} Gov^{t} at least as much as they formerly were under the King & B. Parliament, it amounts as it stands when taken in its presumable meaning, to nothing more than what actually makes a part of the Constitution; the powers of Cong^{s} being much greater, especially on the great points of taxation & trade than the B. Legislature were ever permitted to exercise.

Whatever may have been the personal worth of the 2 delegates from whom the materials in this case were derived, it cannot be unknown that they represented the strong prejudices in N. Y. agst the object of the Convention which was; among other things to take from that State the important power over its commerce to which it was peculiarly attached and that they manifested, untill they withdrew from the Convention, the strongest feelings of dissatisfaction agst the contemplated change in the federal system and as may be supposed, agst those most active in promoting it. Besides misapprehensions of the ear therefore, the attention of the notetaker w^{d} materially be warped, as far at least as, an upright mind could be warped, to an unfavorable understanding of what was said in opposition to the prejudices felt.

I have thought it due to the kind motives of your communication to say thus much; but, I do it in the well founded confidence, that your delicacy will be a safeguard agst my being introduced into the

Newspapers. Were there no other objection to it, there would be an insuperable one in the alternative of following up the task, or acquiescing in like errors as they may come before the public.

With esteem & friendly respects

TO JOHN G. JACKSON. MAD. MSS.

MONTP^{R}, Dec^{r} 27, 1821.

DEAR SIR,—Your favor of the 9th came to hand a few days ago only; and the usages of the season, with some additional incidents have not allowed me time for more promptly acknowledging its friendly contents.

You were right in supposing that some arrangement of the Mass of papers accumulated through a long course of public life would require a tedious attention after my final return to a private station. I regret to say that concurring circumstances have essentially interfered with the execution of the task. Becoming every day more & more aware of the danger of a failure from delay, I have at length set about it in earnest; and shall continue the application as far as health and indispensable avocations will permit.

With respect to that portion of the Mass which contains the voluminous proceedings of the Convention, it has always been my intention that they should, some day or other, see the light. But I have always felt at the same time the delicacy attending such a use of them; especially at an early season.

In general I have leaned to the expediency of letting the publication be a posthumous one. The result of my latest reflections on the subject, I cannot more conveniently explain, than by the inclosed extract from a letter [1] *confidentially* written since the appearance of the proceedings of the Convention as taken from the notes of Chf. Justᶜ Yates.

Of this work I have not yet seen a copy. From the scraps thrown into the Newspapers I cannot doubt that the prejudices of the author guided his pen, and that he has committed egregious errors at least, in relation to others as well as myself.

That most of us carried into the Convention a profound impression produced by the experienced inadequacy of the old Confederation, and by the monitory examples of all similar ones ancient & modern, as to the necessity of binding the States

[1] Madison's note says: "See letter of 15th September, 1821, to Thomas Ritchie." It is as follows:

(*Confidential*)

Dear Sir,—I have recᵈ yours of the 8th instant on the subject of the proceedings of the Convention of 1787.

It is true as the Public has been led to understand, that I possess materials for a pretty ample view of what passed in that Assembly. It is true also that it has not been my intention that they should forever remain under the veil of secrecy. Of the time when it might be not improper for them to see the light, I had formed no particular determination. In general it had appeared to me that it might be best to let the work be a posthumous one, or at least that its publication should be delayed till the Constitution should be well settled by practice, & till a knowledge of the controversial part of the proceedings of its framers could be turned to no improper account. Delicacy also seemed to require some respect to the rule by which the Convention "prohibited a promulgation without leave of what was spoken in it,"

together by a strong Constitution, is certain. The necessity of such a Constitution was enforced by the gross and disreputable inequalities which had been prominent in the internal administrations of most of the States. Nor was the recent & alarming insurrection headed by Shays, in Massachusetts without a very sensible effect on the pub. mind. Such indeed was the aspect of things that in the eyes of all the best friends of liberty a crisis had arrived which was to decide whether the Am^n^ Experiment was to be a blessing to the world, or to blast forever the hopes which the republican cause had inspired; and what is not to be overlooked the disposition to give to a new system all the vigour consistent with Republican principles, was not a little stimu-

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so long as the policy of that rule could be regarded as in any degree unexpired. As a guide in expounding and applying the provisions of the Constitution, the debates and incidental decisions of the Convention can have no authoritative character. However desirable it be that they should be preserved as a gratification to the laudable curiosity felt by every people to trace the origin and progress of their political Institutions, & as a source perhaps of some lights on the Science of Gov^t^ the legitimate meaning of the Instrument must be derived from the text itself; or if a key is to be sought elsewhere, it must be not in the opinions or intentions of the Body which planned & proposed the Constitution, but in the sense attached to it by the people in their respective State Conventions where it rec^d^ all the Authority which it possesses.

Such being the course of my reflections I have suffered a concurrence & continuance of particular inconveniences for the time past, to prevent me from giving to my notes the fair & full preparation due to the subject of them. Of late, being aware of the growing hazards of postponement, I have taken the incipient steps for executing the task; and the expediency of not risking an ultimate failure is suggested by the Albany Publication, from the notes of a N. York member of the Convention. I have not seen more of the volume than has

lated by a backwardness in some quarters towards a Convention for the purpose, which was ascribed to a secret dislike to popular Gov^t and a hope that delay would bring it more into disgrace, and pave the way for a form of Gov^t more congenial with Monarchical or Aristocratical Predilections.

This view of the crisis made it natural for many in the Convention to lean more than was perhaps in strictness warranted by a proper distinction between causes temporary as some of them doubtless were, and causes permanently inherent in popular frames of Gov^t. It is true also, as has been sometimes suggested that in the course of discussions in the Convention, where so much depended on compromise, the patrons of different opinions often

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been extracted into the Newspapers. But it may be inferred from these samples, that it is not only a very mutilated but a very erroneous edition of the matter to which it relates. There must be an entire omission also of the proceedings of the latter period of the session from which Mr. Yates & Mr. Lansing withdrew in the temper manifested by their report to their constituents; the period during which the variant & variable opinions, converged & centered in the modifications seen in the final act of the Body.

It is my purpose now to devote a portion of my time to an exact digest of the voluminous materials in my hands. How long a time it will require, under the interruptions & avocations which are probable, I cannot easily conjecture; not a little will be necessary for the mere labour of making fair transcripts. By the time I get the whole into a due form for preservation, I shall be better able to decide on the question of publication. As to the particular place or Press, sh^d this be the result, I have not as must be presumed, turned a thought to either. Nor can I say more now than that your letter will be kept in recollection, & that should any other arrangement prevail over its object, it will not proceed from any want of confidence esteem or friendly dispositions; of all which I tender you sincere assurances.—
Mad. MSS.

set out on negotiating grounds more remote from each other, than the real opinions of either were from the point at which they finally met.

For myself, having from the first moment of maturing a political opinion down to the present one, never ceased to be a votary of the principle of self Govt, I was among those most anxious to rescue it from the danger which seemed to threaten it; and with that view was willing to give to a Govt resting on that foundation, as much energy as would insure the requisite stability and efficacy. It is possible that in some instances this consideration may have been allowed a weight greater than subsequent reflection within the Convention, or the actual operation of the Govt would sanction. It may be remarked also that it sometimes happened that opinions as to a particular modification or a particular power of the Govt had a conditional reference to others which combined therewith would vary the character of the whole.

But whatever might have been the opinions entertained in forming the Constitution, it was the duty of all to support it in its true meaning as understood *by the nation* at the time of its ratification. No one felt this obligation more than I have done; and there are few perhaps whose ultimate & deliberate opinions on the merits of the Constitution accord in a greater degree with that Obligation.

The departures from the true & fair construction of the instrument have always given me pain, and always experienced my opposition when called for.

The attempts in the outset of the Govt. to defeat those safe, if not necessary, & those politic if not obligatory amendments introduced in conformity to the known desires of the Body of the people, & to the pledges of many, particularly myself when vindicating & recommending the Constitution, was an occurrence not a little ominous. And it was soon followed by indications of political tenets, and by rules, or rather the abandonment of all rules of expounding it, wch. were capable of transforming it into something very different from its legitimate character as the offspring of the National Will. I wish I could say that constructive innovations had altogether ceased.

Whether the Constitution, as it has divided the powers of Govt. between the States in their separate & in their united Capacities, tends to an oppressive aggrandizement of the Genl. Govt. or to an Anarchical Independence of the State Govts. is a problem which time alone can absolutely determine. It is much to be wished that the division as it exists, or may be made with the regular sanction of the people, may effectually guard agst. both extremes; for it cannot be doubted that an accumulation of all Power in the Genl. Govt. wd. as naturally lead to a dangerous accumulation in the Executive hands, as that the resumption of all power by the several States wd. end in the calamities incident to contiguous & rival Sovereigns; to say nothing of its effect in lessening the security for sound principles of administration within each of them.

There have been epochs when the Gen^{l} Gov^{t} was evidently drawing a disproportion of power into its vortex. There have been others when States threatened to do the same. At the present moment it w^{d} seem that both are aiming at encroachments, each on the other. One thing however is certain, that in the present condition and temper of the Community, the Gen^{l} Gov^{t} cannot long succeed in encroachments contravening the will of a Majority of the States, and of the people. Its responsibility to these w^{d}, as was proved on a conspicuous occasion, quickly arrest its career. If, at this time, the powers of the Gen^{l} Gov^{t} be carried to unconstitutional lengths, it will be the result of a majority of the States & of the people, actuated by some impetuous feeling, or some real or supposed interest, overruling the minority, and not of successful attempts by the Gen^{l} Gov^{t} to overpower both.

In estimating the greater tendency in the political System of the Union to a subversion, or to a separation of the States composing it, there are some considerations to be taken into the account which have been little Adverted to by the most oracular Authors on the Science of Gov^{t} and which are but imperfectly developed as yet by our own experience. Such are the size of the States, the number of them, the territorial extent of the whole, and the degree of external danger. Each of these, I am persuaded, will be found to contribute its impulse to the practical direction which our great Political Machine is to take.

We learn, for the first time, the second loss sustained by your parental affection. You will not doubt the sincerity with which we partake the grief produced by both. I wish we could offer better consolations, than the condoling expressions of it. These must be derived from other sources. Afflictions of every kind are the onerous conditions charged on the tenure of life; and it is a silencing if not a satisfactory vindication of the ways of Heaven to man that there are but few who do not prefer an acquiescence in them to a surrender of the tenure itself.

We have had for a great part of the last & present years, much sickness in our own family, and among the black members of it not a little mortality. Mrs. Madison & Payne [Todd] were so fortunate as to escape altogether. I was one of the last attacked & that not dangerously. The disease was a typhoid fever, at present we are all well & unite in every good wish to Mrs. J & yourself & to Mary, & the rest of your family.

JONATHAN BULL & MARY BULL (1821).

CHIC. HIST. SOC. MSS.

(*Written but not published at the period of the Missouri question.*)

Jonathan Bull & Mary Bull, who were descendants of old Jn.º Bull, the head of the family, had inherited contiguous estates in large tracts of land. As they grew up & became well acquainted, a partiality was mutually felt, and advances on several occasions made towards a matrimonial connection.

This was particularly recommended by the advantage of putting their two estates under a common superintendence. Old B. however as guardian of both and having long been allowed certain valuable privileges within the Estates with which he was not long content had always found the means of breaking off the match which he regarded as a fatal obstacle to his secret design of getting the whole property into his own hands.

At a moment favorable as he thought for the attempt, he brought suit agst both, but with a view of carrying it on in a way that would make the process bear on the parties in such different modes times and degrees as might create a jealousy & discord between them. J. & M. had too much sagacity to be duped. They understood well old Bull's character and situation. They knew that he was deeply versed in all the subtleties of the law, that he was of a stubborn & persevering temper, and that he had moreover a very long purse. They were sensible therefore that the more he endeavoured to divide their interests & their defence of the suit the more they ought to make a common cause, and proceed in a concert of measures. As this could best be done by giving effect to the feelings long entertained for each other, an intermarriage was determined on, & solemnized with a deed of settlement as usual in such opulent matches, duly executed, and no event certainly of the sort was ever celebrated by a greater fervor or variety of rejoicings among the respective tenants of the parties. They had a great horror of falling into the hands of old B. and regarded the marriage of their proprietors under whom they held their freeholds as the surest mode of warding off the danger. They were not disappointed. United purses and good advocates compelled old B. after a hard struggle to withdraw the suit, and relinquish forever not only the new pretensions he had set up but the old privileges he had been allowed.

The marriage of J. and M. was not a barren one. On the contrary every year or two added a new member to the family

and on such occasions the practice was to set off a portion of land sufficient for a good farm to be put under the authority of the child on its attaining the age of manhood, and these lands were settled very rapidly by tenants going as the case might be from the estates, sometimes of J. sometimes of M. and sometimes partly from one & partly from the other.

It happened that at the expiration of the non-age of the 10th. or 11th. fruit of the marriage some difficulties were started concerning the rules & conditions of declaring the young party of age, and of giving him as a member of the family, the management of his patrimony. Jonathan became possessed with a notion that an arrangement ought to be made that would prevent the new farm from being settled and cultivated, as in all the latter instances, indiscriminately by persons removing from his and M's estate and confine this privilege to those going from his own; and in the perverse humour which had seized him, he listened moreover to suggestions that M. had some undue advantage from the selections of the Head Stewards which happened to have been made much oftener out of her tenants than his.

Now the prejudice suddenly taken up by J. agst. the equal right of M's tenants to remove with their property to new farms, was connected with a peculiarity in Mary's person not as yet noticed. Strange as it may appear, the circumstance is not the less true, that M. when a Child had unfortunately recd. from a certain African dye, a stain on her left arm which had made it perfectly black, and withal somewhat weaker than the other arm. The misfortune arose from a Ship from Africa loaded with the article which had been permitted to enter a river running thro' her estate, and dispose of a part of the noxious cargo. The fact was well known to J. at the time of their marriage, and if felt as an objection, it was in a manner reduced to nothing by the comely form and pleasing features of M. in every other respect; by her good sense and amiable manners; and in part perhaps by the large and valuable estate she brought with her.

In the unlucky fit however which was upon him, he looked at the black arm, and forgot all the rest. To such a pitch of feeling was he wrought up that he broke out into the grossest taunts on M. for her misfortune; not omitting at the same time to remind her of his long forbearance to exert his superior voice in the appointment of the Head Steward. He had now he said got his eyes fully opened, he saw everything in a new light, and was resolved to act accordingly. As to the Head Steward he w.d let her see that the appointment was virtually in his power; and she might take her leave of all chance of ever having another of her tenants advanced to that station, and as to the black arm, she should, if the colour could not be taken out, either tear off the skin from the flesh or cut off the limb; For it was his fixed determination, that one or other should be done, or he w.d sue out a divorce, & there should be an end of all connection between them and their Estates. I have examined he said well the marriage settlement, and flaws have been pointed out to me, that never occurred before, by which I shall be able to set the whole aside. White as I am all over, I can no longer consort with one marked with such a deformity as the blot on your person.

Mary was so stunned with the language she heard that it was some time before she could speak at all; and as the surprise abated, she was almost choked with the anger & indignation swelling in her bosom. Generous and placable as her temper was, she had a proud sensibility to what she thought an unjust & degrading treatment, which did not permit her to suppress the violence of her first emotions. Her language accordingly for a moment was such as these emotions prompted. But her good sense, and her regard for J. whose qualities as a good husband she had long experienced, soon gained an ascendency, and changed her tone to that of sober reasoning & affectionate expostulation. Well my dear husband you see what a passion you had put me into. But it is now over, and I will endeavor to express my thoughts with the calmness and good feelings which become the relation of wife & husband.

As to the case of providing for our child just coming of age, I shall say but little. We both have such a tender regard for him and such a desire to see him on a level with his brethren as to the chance of making his fortune in the world, that I am sure the difficulties which have occurred will in some way or other be got over.

But I cannot pass so lightly over the reproaches you cast on the colour of my left arm, and on the more frequent appointment of my tenants than of yours to the head-stewardship of our joint estates.

Now as to the first point, you seem to have forgotten, my worthy partner, that this infirmity was fully known to you before our marriage, and is proved to be so by the deed of settlement itself. At that time you made it no objection whatever to our Union; and indeed how could you urge such an objection, when you were conscious that you yourself was not entirely free from a like stain on your own person. The fatal African dye, as you well know, had found its way into your abode as well as mine; and at the time of our marriage had spots & specks scattered over your body as black as the skin on my arm. And altho' you have by certain abrasions and other applications, taken them in some measure out, there are visible remains which ought to soften at least your language when reflecting on my situation. You ought surely when you have so slowly and imperfectly relieved yourself from the mortifying stain altho' the task was comparatively so easy, to have some forbearance and sympathy with me who have a task so much more difficult to perform. Instead of that you abuse me as if I had brought the misfortune on myself, and could remove it at will; or as if you had pointed out a ready way to do it, and I had slighted your advice. Yet so far is this from being the case that you know as well as I do that I am not to be blamed for the origin of the sad mishap, that I am as anxious as you can be to get rid of it; that you are as unable as I am to find out a safe & feasible plan for the purpose; and moreover that I have done everything I could,

in the meantime, to mitigate an evil that cannot as yet be removed. When you talk of tearing off the skin or cutting off the unfortunate limb, must I remind you of what you cannot be ignorant that the most skilful surgeons have given their opinions that if so cruel an operation were to be tried, it could hardly fail to be followed by a mortification or a bleeding to death. Let me ask too whether, should neither of the fatal effects ensue, you would like me better in my mangled or mutilated condition than you do now? And when you threaten a divorce and an annulment of the marriage settlement, may I not ask whether your estate w.d not suffer as much as mine by dissolving the partnership between them? I am far from denying that I feel the advantage of having the pledge of your arm, your stronger arm if you please, for the protection of me & mine; and that my interests in general have been and must continue to be the better for your aid & counsel in the management of them. But on the other hand you must be equally sensible that the aid of my purse will have its value, in case old B. or any other rich litigious fellow should put us to the expense of another tedious lawsuit. And now that we are on the subject of loss & gain, you will not be offended if I take notice of a report that you sometimes insinuate that my estate according to the rates of assessment, does not pay its due share into the common purse. I think my dear J. that if you ever entertained this opinion you must have been led into it by a very wrong view of the subject as to the direct income from rents, there can be no deficiency on my part there; the rule of apportionment being clear & founded on a calculation by numbers. And as to what is raised from the articles bought & used by my tenants, it is difficult to conceive that my tenants buy or use less than yours, considering that they carry a greater amount of crops to market the whole of which it is well known they lay out in articles from the use of which the bailiff regularly collects the sum due. It w.d seem then that my tenants selling more, buy more; buying more use more, and using more

pay more. Meaning however not to put you in the wrong, but myself in the right, I do not push the argument to that length, because I readily agree that in paying for articles bought & used you have beyond the fruits of the soil on which I depend ways & means which I have not. You draw chiefly the interest we jointly pay for the funds we were obliged to borrow for the fees & costs the suit of Old Bull put us to. Your tenants also turn their hands so ingeniously to a variety of handicrafts & other mechanical productions, that they make not a little money from that source. Besides all this, you gain much by the fish you catch & carry to market; by the use of your teams and boats in transporting and trading on the crops of my tenants; and indeed in doing that sort of business for strangers also. This is a fair statement on your side of the account, with the drawback however, that as your tenants are supplied with a greater proportion of articles made by themselves, than is the case with mine, the use of which articles does not contribute to the common purse, they avoid in the same proportion, the payments collected from my tenants. If I were to look still farther into this matter and refer you to every advantage you draw from the union of our persons & property, I might remark that the profits you make from your teams & boats & which enable you to pay your quota in great part, are drawn from the preference they have in conveying & disposing of the products of my soil; a business that might fall into other hands in the event of our separation. I mention this as I have already s.^{d} not by way of complaint for I am well satisfied that your gain is not altogether my loss in this more than in many other instances; and that what profits you immediately may profit me also in the long run. But I will not dwell on these calculations & comparisons of interest which you ought to weigh as well as myself as reasons agst the measure to which you threaten a resort. For when I consult my own heart & call to mind all the endearing proofs you have given of yours qeing in sympathy with it, I must needs hope that there are

other ties than mere interest to prevent us from ever suffering a transient resentment on either side, with or without cause, to bring on both all the consequences of a divorce; consequences too which w.d be a sad inheritance indeed for our numerous and beloved offspring.

As to the other point relative to the Head Stewards I must own, my worthy husband, that I am altogether at a loss for any cause of dissatisfaction on your part or blame on mine. It is true as you say that they have been oftener taken from among my tenants than yours, but under other circumstances the reverse might as well have happened. If the individ.ls appointed had made their way to the important trust by corrupt or fallacious means; if they had been preferred merely because they dwelt on my estate, or had succeeded by any interposition of mine contrary to your inclination; or finally if they had administered the trust unfaithfully, sacrificing your interests to mine, or the interests of both to selfish or unworthy purposes in either of these cases you w.d have ground for your complaints. But I know J. that you are too just and too candid not to admit that no such ground exists. The head Stewards in question c.d not have been appointed without your own participation as well as mine. They were recommended to our joint choice by the reputed fairness of their characters, by their tried fidelity & competency in previous trusts, and by their exemption from all charges of impure & grasping designs, and so far were they from being partial to my interest at the expense of yours, that they were rather considered by my tenants as leaning to a management more favorable to yours than to mine. I need not say that I allude to the bounties direct or indirect to your teams & boats, to the hands employed in your fisheries, and to the looms and other machineries which with.t such encouragement w.d not be able to meet the threatened rivalships of interfering neighbors. I say only that these ideas were in the heads of some of my tenants. For myself I s.hd not have mentioned them but as a defence ag.st what I must regard as so unfounded

that it ought not to be permitted to make a lasting impression.[1]

But laying aside all these considerations, I repeat my dear J. that the app^{t} of the Head Steward lies as much if not more with you than with me. Let the choice fall where it may, you will find me faithfully abiding by it, whether it be thought the best possible one or not, and sincerely wishing that he may equally improve better opportunities of serving us both than was the lot of any of those who have gone before him.

J. who had a good heart as well as sound head & steady temper was touched with this tender & considerate language of M. and the bickering w^{ch} had sprung up ended as the quarrels of lovers *always*, & of married folks *sometimes* do, in increased affection & confidence between the parties.

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[1] To Lafayette Madison wrote the same year (date not given):

"The Negro slavery is as you justly complain a sad blot on our free Country tho. a very ungracious subject of reproaches from the quarter w^{ch} has been most lavish of them. No satisfactory plan has yet been devised for taking out the stain. If an adequate asylum c^{d} be found in Africa that w^{d} be the appropriate destination for the unhappy race among us. Some are sanguine that the efforts of an existing Colonization Society will accomplish such a provision; but a very partial success seems the most that can be expected. Some other region must therefore be found for them as they become free and willing to emigrate. The repugnance of the Whites to their continuance among them is founded on prejudices themselves founded on physical distinctions, which are not likely soon if ever to be eradicated. Even in States, Massachusetts for example, which displayed most sympathy with the people of colour on the Missouri question, prohibitions are taking place agst their becoming residents. They are every where regarded as a nuisance, and must really be such as long as they are under the degradation which the public sentiment inflicts on them. They are at the same time rapidly increasing from manumissions and from offsprings, and of course lessening the general disproportion between the slaves & the Whites. This tendency is favorable to the cause of a universal emancipation."—*Mad. MSS.*

TO HEZEKIAH NILES.[1] CHIC. HIST. SOC. MSS.

MONTPELLIER Jany 8 1822

In Ramsay's History of the American Revolution vol:2, pa. 300–301 is the following passage

"Mr. Jay was instructed to contend for the right of the U. States to the free navigation of the river Mississippi, and if an express acknowledgement of it could not be obtained, he was restrained from acceding to any stipulation by which it should be relinquished. But in February 1781, when Lord Cornwallis was making rapid progress in overruning the Southern States, and when the mutiny of the Pennsylvania line and other unfavorable circumstances depressed the spirits of the Americans, Congress, on *the recommendation* of Virginia, directed him to recede from his instructions so far as they insist on the free navigation of that part of the Mississippi which lies below the thirty first degree of North Latitude, provided such cession should be unalterably insisted on by Spain, and provided the free navigation of the said river above the said degree of North Latitude should be acknowledged and guaranteed by his Catholic Majesty, in common with his own subjects."

In this account of the instruction to Mr. Jay to relinquish the navigation of the Mississippi below the Southern boundary of the U. States, the measure would seem to have had its origin with the State of Virginia.

This was not the case: and the very worthy historian, who was not at that period a member of Congress, was led into his error by the silence of the journals as to what had passed on the subject previous to Feb^{y} 15, 1781, when they agreed to the instruction to make the relinquishment, as moved by the Delegates of Virginia in pursuance of instructions from the Legislature. It was not unusual with the Secretary of Con-

[1] The letter with the annexed copies of supporting letters was printed in Niles' *Weekly Register*, January 26, 1822, Vol. xxi., p. 347. For the letter of November 25, 1780, to Joseph Jones, see *ante* I., 101; for that of December 5, 1780, to Jones, *Id.*, 110; for the joint letter of Thedorick Bland and Madison to Jefferson, December 13, 1780, *Id.*, 102, n.

gress to commence his entries in the Journal with the stage in which the proceedings assumed a definitive character; omitting, or noting on separate & informal sheets only, the preliminary stages.

The Delegates from Virg[a] had been long under instructions from their State to insist on the right to the navigation of the Mississippi; and Congress had always included it in their ultimatum for peace. As late as the 4th of Oc[r] 1780 (see the secret Journals of that date) they had renewed their adherence to this point by unanimously agreeing to the report of a Committee to whom had been referred "certain instructions to the delegates of Virg[a] by their constituents and a letter of May 29 from Mr. Jay at Madrid," which report[1] prohibited him from relinquishing the right of the U. States to the free navigation of the River Mississippi into and from the sea, as asserted in his former instructions. And on the 17th of the same month, October (see the secret Journals of that date) Congress agreed to the report of a Committee explaining the reasons & principles on which the instructions of October the 4th were founded.

Shortly after this last measure of Congress, the Delegates of S. Carolina & Georgia, seriously affected by the progress and views of the Enemy in the Southern States, and by the possibility that the interference of the Great neutral powers might force a peace on the principle of *Uti possidetis*, whilst those States or parts of them might be in the military occupancy of G. Britain, urged with great zeal, within & without doors, the expediency of giving fresh vigour to the means of driving the enemy out of their country by drawing Spain into an alliance, and into pecuniary succours, believed to be unattainable without yielding our claim to the navigation of the Mississippi. The efforts of those Delegates did not fail to make proselytes till at length it was ascertained that a number was disposed to vote for the measure sufficient without the vote of Virginia and it happened that one of the two delegates

[1] Drawn by J. M.—Madison's note.

from that State concurred in the policy of what was proposed [see the annexed letter of Nov^{r} 25 & extract of Dec^{r} 5, 1788, from J. Madison to Jos. Jones].

In this posture of the business, Congress was prevailed on to postpone any final decision untill the Legislature of Virginia could be consulted; it being regarded by all as very desirable, when the powers of Congress depended so much on the individual wills of the States, that an important member of the Union, on a point particularly interesting to it, should receive every conciliatory mark of respect, and it being calculated also that a change in the councils of that State might have been produced by the causes producing it in others.

A joint letter bearing date Dec^{r} 13, 1780 [which see annexed] was accordingly written by the Delegates of Virginia to Governor Jefferson to be laid before the Legislature then in session simply stating the case and asking instructions on the subject; without any expression of their own opinions, which being at variance could not be expressed in a letter to be signed by both.

The result of these communications from the Delegates was a repeal of the former instructions and a transmission of different ones, the receipt of which, according to an understanding when the decision of Congress was postponed, made it incumbent on the two Delegates to bring the subject before Congress. This they did by offering the instruction to M Jay agreed to on the 15th of Feb^{y} 1781 and referred to in the historical passage above cited.

It is proper to add that the instant the menacing crisis was over the Legislature of Virginia revoked the instruction to her Delegates to cede the navigation of the Mississippi and that Congress seized the first moment also for revoking theirs to M^{r} Jay.

I have thought a statement of these circumstances due to truth; and that its accuracy may be seen to depend not on memory alone the copies of contemporary documents verifying it are annexed.

In the hope that this explanation may find its way to the notice of some future Historian of our Revolutionary transactions I request for it a place, if one can be afforded, in your Register, where it may more readily offer itself to his researches than in publications of more transient or diffusive contents.

With friendly respects

TO JAMES MONROE. MAD. MSS.

MONTPELLIER, May 6, 1822.

DEAR SIR, This will probably arrive at the moment for congratulating you on the close of the scene in which your labours are blended with those of Congress. When will your recess from those which succeed commence; and when & how much of it will be passed in Albemarle? We hope for the pleasure of halts with us, & that Mrs. M & others of your family will be with us.

Mr. Anduaga I observe casts in our teeth the postponement of the recognition of Spanish America til the cession of Florida was secured, and taking that step immediately after.[1] This insinuation will be so readily embraced by suspicious minds, and particularly by the wiley Cabinets of Europe, that I cannot but think it might be well to take away that pretext against us, by an Exposé, brought before the public in some due form, in which our conduct would be seen in its true light. An historical view of the early sentiments expressed here in favor of

[1] The Florida treaty was proclaimed February 22, 1821; Monroe's message recommending recognition of South American independence was dated March 8, 1822.

our neighbours, the successive steps openly taken, manifesting our sympathy with their cause, & our anticipation of its success, more especially our declarations of neutrality towards the contending parties as engaged in a civil, not an insurrectionary, war, would shew to the world that we never concealed the principles that governed us, nor the policy which terminated in the decisive step last taken. And the time at which this was taken, is surely well explained, without reference to the Florida Treaty, by the greater maturity of the Independence of some of the new States, & particularly by the recent revolution in Mexico which is able not only to maintain its own Independence, but to turn the scale if it were doubtful, in favor of the others. Altho' there may be no danger of hostile consequences from the Recognising act, it is desirable that our Republic should stand fair in the eyes of the world, not only for its own sake, but for that of Republicanism itself. Nor would perhaps a conciliatory appeal to the candour & liberality of the better part of Europe be a superfluous precaution, with a view to the possible collisions with Spain on the Ocean, & the backing she may receive from some of the great powers friendly to her or unfriendly to us. Russia has, if I mistake not, heretofore gone far in committing herself against a separation of the Colonies from Spain. And her enterprising policy ag.t revolutionary events every where make it the more probable that she may resent the contrast to it in that of the U. S. I am

aware that these ideas cannot be new to you, & that you can appreciate them much better than I can. But having the pen in my hand I have permitted them to flow from it. It appears that the Senate have been discussing the precedents relating to the appointment of public Ministers. One question is, whether a Public Minister be an officer in the strict constitutional sense.[1] If he is, the appoint-

[1] Madison made the following memorandum on the subject (undated):

Power of the President to appoint Public Ministers & Consuls in the recess of the Senate.

The place of a foreign Minister or Consul is not an *office* in the constitutional sense of the term.

1. It is not created by the Constitution.
2. It is not created by a law authorized by the Constitution.
3. It cannot, as an office, be created by the mere appointment for it, made by the President & Senate, who are to fill, not create offices. These must be "established by law," & therefore by Congress only.
4. On the supposition even that the appointment could create an office, the office would expire with the expiration of the appointment, and every new appointment would create a new office, not fill an old one. A law reviving an expired law is a new law.

The place of a foreign Minister or Consul is to be viewed, as created by the Law of Nations: to which the U. S. as an Independent nation, is a party; and as always open for the proper functionaries, when sent by the constituted authority of one nation, and received by that of another. The Constitution in providing for the appointment of such functionaries, presupposes this mode of intercourse as a branch of the Law of Nations.

The question to be decided is, What are the cases in which the President can make appointments without the concurrence of the Senate; and it turns on the construction of the power "to fill up all vacancies which may happen during the recess of the Senate."

The term all embraces both foreign and municipal cases; and in examining the power in the foreign, however failing in exact analogy to the municipal, it is not improper to notice the extent of the power in the municipal.

If the text of the Constitution be taken literally no municipal officer

ment of him must be authorized by *law*, not by the President & Senate. If on the other hand, the appointment creates the office, the office must expire with the appointment, as an office created by Law expires with the law; & there can be no difference between Courts to which a Public Minister had been sent, & those to which one was sent for the first time. According to my recollection this subject

could be appointed by the President alone, to a vacancy not *originating* in the recess of the Senate. It appears however, that under the sanction of the maxim, qui hæret in litera hæret in cortice, and of the argumentum ab inconvenienti, the power has been understood to extend, in cases of necessity or urgency, to vacancies happening to exist, in the recess of the Senate, though not coming into existence in the recess. In the case, for example, of an appointment to a vacancy by the President & Senate, of a person dead at the time, but not known to be so, till after the adjournment and dispersion of the Senate, it has been deemed within the reason of the constitutional provision, that the vacancy should be filled by the President alone; the object of the provision being to prevent a failure in the execution of the laws, which without such a scope to the power, must very inconveniently happen, more especially in so extensive a country. Other cases of like urgency may occur; such as an appointment by the President & Senate rendered abortive by a refusal to accept it.

If it be admissible at all to make the power of the President without the Senate, applicable to vacancies happening unavoidably to exist, tho' not to originate, in the recess of the Senate, and which the public good requires to be filled in the recess, the reasons are far more cogent for considering the sole power of the President as applicable to the appointment of foreign functionaries; inasmuch as the occasions demanding such appointments may not only be far more important, but on the further consideration, that unlike appointments under the municipal law, the calls for them may depend on circumstances altogether under foreign controul, and sometimes on the most improbable & sudden emergencies; and requiring therefore that a competent authority to meet them should be always in existence. It would be a hard imputation on the Framers and Ratifiers of the Constitution, that while providing for casualties of inferior magnitude, they should have intended to exclude from the provision, the means usually

was on some occasion carefully searched into, & it was found that the practice of the Gov^t^ had from the beginning been regulated by the idea that the places or offices of Pub. Ministers & Consuls existed under the law & usages of Nations, and were always open to receive appointments as they might be made by competent authorities.

Other questions may be started as to Commissions

employed in obviating a threatened war; in putting an end to its calamities; in conciliating the friendship or neutrality of powerful nations, or even in seizing a favourable moment for commercial or other arrangements material to the public interest. And it would surely be a hard rule of construction, that would give to the text of the Constitution an operation so injurious, in preference to a construction that would avoid it, and not be more liberal than would be applied to a remedial statute. Nor ought the remark to be omitted that by rejecting such a construction this important function unlike some others, would be excluded altogether from our political system, there being no pretension to it in any other department of the General Government, or in any department of the State Gov^ts^ To regard the power of appointing the highest Functionaries employed in foreign missions, tho' a specific & substantive provision in the Constitution, as incidental merely, in any case, to a subordinate power, that of a provisional negotiation by the President alone, would be a more strained construction of the text than that here given to it.

The view which has been taken of the subject overrules the distinction between missions to foreign Courts, to which there had before been appointments, and to which there had not been. Not to speak of diplomatic appointments destined not for stations at foreign courts, but for special negotiations, no matter where, and to which the distinction would be inapplicable, it cannot bear a rational or practical test in the cases to which it has been applied. An appointment to a foreign court, at one time, unlike an appointment to a municipal office always requiring it, is no evidence of a need for the appointment at another time; whilst an appointment where there had been none before, may, in the recess of the Senate, be of the greatest urgency. The distinction becomes almost ludicrous when it is asked for what length of time the circumstance of a former appointment is to have the effect assigned to it on the power of the President. Can it be

for making Treaties; which when given to a public Minister employ him in a *distinct* capacity; but this is not the place, nor am I the person, to pursue the subject.

We had a hard winter & our wheat fields exhibit the proof of it. To make the matter worse, the fly has commenced its ravages in a very threatening manner, a dry cold spell will render them very fatal. I know not the extent of the evil. There has been of late a reanimation of prices for the last crop, occasioned by the expected opening of the W. India Trade; but there is so little remaining in the hands of the Farmers, that the benefit will be scarcely felt by them.

TO JAMES MONROE. MAD. MSS.

MONTPELLIER, May 18, 1822.

DEAR SIR, I am just favored with yours of the 12th, in which you ask whether I recollect any case of a "nomination of an officer of the Army to a particular office, to take rank from a certain date,

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seriously alleged, that after the interval of a century, & the political changes incident to such a lapse of time, the original appointment is to authorize a new one, without the concurrence of the Senate; whilst a like appointment to a new court, or even a new nation however immediately called for, is barred by the circumstance that no previous appointment to it had taken place. The case of diplomatic missions belongs to the Law of Nations, and the principles & usages on which that is founded are entitled to a certain influence in expounding the provisions of the Constitution which have relation to such missions. The distinction between courts to which there had, and to which there had not been previous missions, is believed to be recorded in none of the oracular works on international law, and to be unknown to the

in which the Senate have interposed to give rank from another date?" and again, whether I recollect "any instances of filling original vacancies, in civil or military Offices in the recess of the Senate, where authority was not given by law?"

On the first point I have no particular recollection, but it is possible that there may have been cases such as you mention.[1] The journals of the Senate will of course present them if they ever existed. Be the fact as it may, it would seem that such an interposition of the Senate, would be a departure from the naked authority to decide on nominations of the Executive. The tenure of the officer, in the interval b~~ee~~n the two dates, where that of the Senate was the prior one would be altogether of the Senate's creation; or if understood to be made valid by the Commission of the President, would make the appointment *originate* with the Senate, not with the President; nor would a posteriority of the date of the Senate, possibly be without some indirect operation beyond the competency of that Body.

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practice of Governments, where no question was involved as to the *de facto* establishment of a Government.

With this exposition, the practice of the Government of the U. States has corresponded, and with every sanction of reason & public expediency. If in any particular instance the power has been misused, which it is not meant to suggest, that could not invalidate either its legitimacy or its general utility, any more than any other power would be invalidated by a like fault in the use of it.—*Mad. MSS.*

[1] This letter was shown to John Quincy Adams by Monroe and the part relating to appointments was read to the Cabinet.—*Adams's Diary*, v., 539; vi., 25.

On the second point, although my memory cannot refer to any particular appointments to original vacancies in the recess of the Senate, I am confident that such have taken place under a pressure of circumstances, where no legal provision had authorized them. There have been cases where offices were created by Congress, and appointments to them made with the sanction of the Senate, which were notwithstanding found to be vacant in consequence of refusals to accept them, or of unknown death of the party at the time of the appointment, and thence filled by the President alone. I have a faint impression that instances of one or both occurred within the Mississippi Territory. These however were cases of necessity. Whether others not having that basis have occurred my present recollections do not enable me to say.

In the inclosed English Newspaper is sketched a debate in the House of Commons throwing light on the practice there with respect to filling military vacancies in certain cases. If I understand the sketch from a very slight perusal, the rule of promotion is not viewed as applicable to original vacancies. In the abstract it has always appeared to me desirable that the door to special merit should be widened as far as could possibly be reconciled with the general Rules of promotion. The inconveniency of a rigid adherence to this Rule gave birth to Brevets; and favors every permitted mode of Relaxing it, in order to do justice to superior capacity for public service.

The aspect of things at Washington to which you allude could escape the notice of no one who ever looks into the Newspapers. The only effect of a political rivalship among the members of the Cabinet which I particularly anticipated & which I believe I mentioned once in conversation with you, was an increased disposition in each to cultivate the good will of the President. The object of such rivalship on & through the proceedings of Congress is to be ascribed I hope to a peculiarity and Combination of circumstances not likely often to recur in our Annals.[1]

I am afraid you are too sanguine in your inferences from the absence here of causes which have most engendered & embittered the spirit of party in former times & in other Countries. There seems to be a propensity in free Gov^ts^ which will always find or make subjects, on which human opinions & passions may be thrown into conflict. The most, perhaps that can be counted on, & that will be sufficient, is, that the occasions for party contests in such a Country & Gov^t^ as ours, will be either so slight or so transient, as not to threaten any permanent or dangerous consequences to the character & prosperity of the Republic. But I must not forget that I took up my pen merely to answer your two inquiries, and to remind you that you omitted to answer mine as to your intended move-

[1] Adams, Secretary of State, Crawford, Secretary of the Treasury, and Calhoun, Secretary of War, were candidates for the nomination to succeed Monroe and at enmity with each other.

ments after the release from your confinement at Washington.

TO EDWARD LIVINGSTON. MAD. MSS.

MONTP^{R}, July 10, 1822

D^{R} SIR, I was favored some days ago with your letter of May 19, accompanied by a copy of your Report to the Legislature of the State on the subject of a penal Code.[1]

I should commit a tacit injustice if I did not say that the Report does great honor to the talents and sentiments of the Author. It abounds with ideas of conspicuous value and presents them in a manner not less elegant than persuasive.

The reduction of an entire code of criminal jurisprudence, into statutory provisions, excluding a recurrence to foreign or traditional codes, and substituting for technical terms, more familiar ones with or without explanatory notes, cannot but be viewed as a very arduous task. I sincerely wish your execution of it may fulfil every expectation.

I cannot deny, at the same time, that I have been accustomed to doubt the practicability of giving all the desired simplicity to so complex a subject, without involving a discretion, inadmissible in free Gov^{t} to those who are to expound and apply the law. The rules and usages which make a part of the law, tho' to be found only in elementary treatises,

[1] Livingston's famous Report of the Plan of the Penal Code had just been published in New Orleans.

in respectable commentaries, and in adjudged cases, seem to be too numerous & too various to be brought within the requisite compass; even if there were less risk of creating uncertainties by defective abridgments, or by the change of phraseology.

This risk w^d^ seem to be particularly incident to a substitution of new words & definitions for a technical language, the meaning of which had been settled by long use and authoritative expositions. When a technical term may express a very simple idea, there might be no inconveniency or rather an advantage in exchanging it for a more familiar synonyme, if a precise one could be found. But where the technical terms & phrases have a complex import, not otherwise to be reduced to clearness & certainty, than by practical applications of them, it might be unsafe to introduce new terms & phrases, tho' aided by brief explanations. The whole law expressed by single terms, such as "trial by jury, evidence, &c, &c." fill volumes, when unfolded into the details which enter into their meaning.

I hope it will not be thought by this intimation of my doubts I wish to damp the enterprize from which you have not shrunk. On the contrary I not only wish that you may overcome all the difficulties which occur to me; but am persuaded that if compleat success sh^d^ not reward your labors, there is ample room for improvements in the criminal jurisprudence of Louisiana as elsewhere which are well worthy the exertion of your best powers, and wh will furnish useful examples to other members

of the Union. Among the advantages distinguishing our compound Gov^t^ it is not the least that it affords so many opportunities and chances in the local Legislatures, for salutary innovations by some, which may be adopted by others; or for important experiments, which, if unsuccessful, will be of limited injury, and may even prove salutary as beacons to others. Our political system is found also to have the happy merit of exciting a laudable emulation among the States composing it, instead of the enmity marking competitions among powers wholly alien to each other.

I observe with particular pleasure the view you have taken of the immunity of Religion from civil jurisdiction, in every case where it does not trespass on private rights or the public peace. This has always been a favorite principle with me; and it was not with my approbation, that the deviation from it took place in Cong^s^, when they appointed Chaplains, to be paid from the Nat^l^ Treasury. It would have been a much better proof to their Constituents of their pious feeling if the members had contributed for the purpose, a pittance from their own pockets. As the precedent is not likely to be rescinded, the best that can now be done, may be to apply to the Const^n^ the maxim of the law, de minimis non curat.

There has been another deviation from the strict principle in the Executive Proclamations of fasts & festivals, so far, at least, as they have spoken the language of *injunction*, or have lost sight of the equality of *all* religious sects in the eye of the Con-

stitution. Whilst I was honored with the Executive Trust I found it necessary on more than one occasion to follow the example of predecessors. But I was always careful to make the Proclamations absolutely indiscriminate, and merely recommendatory; or rather mere *designations* of a day, on which all who thought proper might *unite* in consecrating it to religious purposes, according to their own faith & forms. In this sense, I presume you reserve to the Gov.t a right to *appoint* particular days for religious worship throughout the State, without any penal sanction *enforcing* the worship. I know not what may be the way of thinking on this subject in Louisiana. I should suppose the Catholic portion of the people, at least, as a small & even unpopular sect in the U. S., would rally, as they did in Virg.a when religious liberty was a Legislative topic, to its broadest principle. Notwithstanding the general progress made within the two last centuries in favour of this branch of liberty, & the full establishment of it, in some parts of our Country, there remains in others a strong bias towards the old error, that without some sort of alliance or coalition between Gov.t & Religion neither can be duly supported. Such indeed is the tendency to such a coalition, and such its corrupting influence on both the parties, that the danger cannot be too carefully guarded ag.st And in a Gov.t of opinion, like ours, the only effectual guard must be found in the soundness and stability of the general opinion on the subject. Every new & successful example

therefore of a perfect separation between ecclesiastical and civil matters, is of importance. And I have no doubt that every new example, will succeed, as every past one has done, in shewing that religion & Gov.t will both exist in greater purity, the less they are mixed together. It was the belief of all sects at one time that the establishment of Religion by law, was right & necessary; that the true religion ought to be established in exclusion of every other; And that the only question to be decided was which was the true religion. The example of Holland proved that a toleration of sects, dissenting from the established sect, was safe & even useful. The example of the Colonies, now States, which rejected religious establishments altogether, proved that all Sects might be safely & advantageously put on a footing of equal & entire freedom; and a continuance of their example since the declaration of Independence, has shewn that its success in Colonies was not to be ascribed to their connection with the parent Country. If a further confirmation of the truth could be wanted, it is to be found in the examples furnished by the States, which have abolished their religious establishments. I cannot speak particularly of any of the cases excepting that of Virg.a where it is impossible to deny that Religion prevails with more zeal, and a more exemplary priesthood than it ever did when established and patronised by Public authority. We are teaching the world the great truth that Gov.ts do better without Kings & Nobles than with them.

The merit will be doubled by the other lesson that Religion flourishes in greater purity, without than with the aid of Gov.t

My pen I perceive has rambled into reflections for which it was not taken up. I recall it to the proper object of thanking you for your very interesting pamphlet, and of tendering you my respects and good wishes.

J. M. presents his respects to Mr. [Henry B(?)]. Livingston and requests the favor of him to forward the above inclosed letter to N. Orleans or to retain it as his brother may or may not be expected at N. York.

TO W. T. BARRY. MAD. MSS.

Aug 4, 1822

D.R SIR, I rec.d some days ago your letter of June 30, and the printed Circular to which it refers.

The liberal appropriations made by the Legislature of Kentucky for a general system of Education cannot be too much applauded. A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

I have always felt a more than ordinary interest in the destinies of Kentucky. Among her earliest settlers were some of my particular friends and

Neighbors. And I was myself among the foremost advocates for submitting to the Will of the "District" the question and the time of its becoming a separate member of the American family. Its rapid growth & signal prosperity in this character have afforded me much pleasure; which is not a little enhanced by the enlightened patriotism which is now providing for the State a Plan of Education embracing every class of Citizens, and every grade & department of Knowledge. No error is more certain than the one proceeding from a hasty & superficial view of the subject: that the people at large have no interest in the establishment of Academies, Colleges, and Universities, where a few only, and those not of the poorer classes can obtain for their sons the advantages of superior education. It is thought to be unjust that all should be taxed for the benefit of a part, and that too the part least needing it.

If provision were not made at the same time for every part, the objection would be a natural one. But, besides the consideration when the higher Seminaries belong to a plan of general education, that it is better for the poorer classes to have the aid of the richer by a general tax on property, than that every parent should provide at his own expence for the education of his children, it is certain that every Class is interested in establishments which give to the human mind its highest improvements, and to every Country its truest and most durable celebrity.

Learned Institutions ought to be favorite objects with every free people. They throw that light over the public mind which is the best security against crafty & dangerous encroachments on the public liberty. They are the nurseries of skilful Teachers for the schools distributed throughout the Community. They are themselves schools for the particular talents required for some of the Public Trusts, on the able execution of which the welfare of the people depends. They multiply the educated individuals from among whom the people may elect a due portion of their public Agents of every description; more especially of those who are to frame the laws; by the perspicuity, the consistency, and the stability, as well as by the just & equal spirit of which the great social purposes are to be answered.

Without such Institutions, the more costly of which can scarcely be provided by individual means, none but the few whose wealth enables them to support their sons abroad can give them the fullest education; and in proportion as this is done, the influence is monopolized which superior information every where possesses. At cheaper & nearer seats of Learning parents with slender incomes may place their sons in a course of education putting them on a level with the sons of the Richest. Whilst those who are without property, or with but little, must be peculiarly interested in a System which unites with the more Learned Institutions, a provision for diffusing through the entire Society the education needed for the common purposes of life.

A system comprizing the Learned Institutions may be still further recommended to the more indigent class of Citizens by such an arrangement as was reported to the General Assembly of Virginia, in the year 1779, by a Committee[1] appointed to revise laws in order to adapt them to the genius of Republican Government. It made part of a "Bill for the more general diffusion of knowledge" that wherever a youth was ascertained to possess talents meriting an education which his parents could not afford, he should be carried forward at the public expence, from seminary to seminary, to the completion of his studies at the highest.

But why should it be necessary in this case, to distinguish the Society into classes according to their property? When it is considered that the establishment and endowment of Academies, Colleges, and Universities are a provision, not merely for the existing generation, but for succeeding ones also; that in Governments like ours a constant rotation of property results from the free scope to industry, and from the laws of inheritance, and when it is considered moreover, how much of the exertions and privations of all are meant not for themselves, but for their posterity, there can be little ground for objections from any class, to plans of which every class must have its turn of benefits. The rich man, when contributing to a permanent plan for the education of the poor, ought to reflect

[1] The report was made by Mr. Jefferson, Mr. Pendleton, and Mr. Wythe.—*Madison's Note.*

that he is providing for that of his own descendants; and the poor man who concurs in a provision for those who are not poor that at no distant day it may be enjoyed by descendants from himself. It does not require a long life to witness these vicissitudes of fortune.

It is among the happy peculiarities of our Union, that the States composing it derive from their relation to each other and to the whole, a salutary emulation, without the enmity involved in competitions among States alien to each other. This emulation, we may perceive, is not without its influence in several important respects; and in none ought it to be more felt than in the merit of diffusing the light and the advantages of Public Instruction. In the example therefore which Kentucky is presenting, she not only consults her own welfare, but is giving an impulse to any of her sisters who may be behind her in the noble career.

Throughout the Civilized World, nations are courting the praise of fostering Science and the useful Arts, and are opening their eyes to the principles and the blessings of Representative Government. The American people owe it to themselves, and to the cause of free Government, to prove by their establishments for the advancement and diffusion of Knowledge, that their political Institutions, which are attracting observation from every quarter, and are respected as Models, by the new-born States in our own Hemisphere, are as favorable to the intellectual and moral improvement of Man as they

are conformable to his individual & social Rights. What spectacle can be more edifying or more seasonable, than that of Liberty & Learning, each leaning on the other for their mutual & surest support?

The Committee, of which your name is the first, have taken a very judicious course in endeavouring to avail Kentucky of the experience of elder States, in modifying her Schools. I enclose extracts from the laws of Virginia on that subject; though I presume they will give little aid; the less as they have as yet been imperfectly carried into execution. The States where such systems have been long in operation will furnish much better answers to many of the enquiries stated in your Circular. But after all, such is the diversity of local circumstances, more particularly as the population varies in density & sparseness, that the details suited to some may be little so to others. As the population however, is becoming less & less sparse, and it will be well in laying the foundation of a Good System, to have a view to this progressive change, much attention seems due to examples in the Eastern States, where the people are most compact, & where there has been the longest experience in plans of popular education.

I know not that I can offer on the occasion any suggestions not likely to occur to the Committee. Were I to hazard one, it would be in favour of adding to Reading, Writing, & Arithmetic, to which the instruction of the poor, is commonly limited, some knowledge of Geography; such as can easily be con-

veyed by a Globe & Maps, and a concise Geographical Grammar. And how easily & quickly might a general idea even, be conveyed of the Solar System, by the aid of a Planatarium of the Cheapest construction. No information seems better calculated to expand the mind and gratify curiosity than what would thus be imparted. This is especially the case, with what relates to the Globe we inhabit, the Nations among which it is divided, and the characters and customs which distinguish them. An acquaintance with foreign Countries in this mode, has a kindred effect with that of seeing them as travellers, which never fails, in uncorrupted minds, to weaken local prejudices, and enlarge the sphere of benevolent feelings. A knowledge of the Globe & its various inhabitants, however slight, might moreover, create a taste for Books of Travels and Voyages; out of which might grow a general taste for History, an inexhaustible fund of entertainment & instruction. Any reading not of a vicious species must be a good substitute for the amusements too apt to fill up the leisure of the labouring classes.

I feel myself much obliged Sir by your expressions of personal kindness, and pray you to accept a return of my good wishes, with assurances of my great esteem & respect.

P. S. On reflection I omit the extracts from the laws of Virg[a], which it is probable may be within your reach at home. Should it be otherwise, and you think them worth the transmission by the mail, the omission shall be supplied.

TO THOMAS RITCHIE. MAD. MSS.

Aug. 13, 1822.

Dr Sir Your favor of Aug 7 is so full & satisfactory an answer to my request of July 2, that I ought not to withhold my thanks for it. The delay was immaterial. But I lament most sincerely the afflicting causes of it.

With much esteem & friendly respects

Confidential

The Enquirer of the 6th, very properly animadverts on the attempts to pervert the historical circumstances relating to the Draught of the Declaration of Independence.[1] The fact that Mr. Jefferson was the author and the nature of the alterations made in the Original, are too well known and the proofs are too well preserved, to admit of successful misrepresentation.

In one important particular, the truth, tho' on record, seems to have escaped attention; and justice to be so far left undone to Virga. It was in obedience to *her positive instruction*, to her Delegates in Congs. that the motion for Independence was made. The instruction passed *unanimously* in her Convention on the 15 of May, 1776[2] and the Mover was of course, the Mouth only of the Delegation, as the Delegation was of the Convention. Had P. Ran-

[1] The attempt to give credit to Richard Henry Lee for part authorship of the Declaration of Independence appeared in the *Philadelphia Union* and *Federal Republican*, reprinted in the *Charleston Patriot*, and all copied in the *Richmond Enquirer*, August 6, 1822.

[2] See the Journal of that date (*Madison's Note*).

dolph the first named not been cut off by Death, the motion w^d^. have been made by him. The duty, in consequence of that event devolved on the next in order R. H. Lee, who had political merits of a sort very different from that circumstantial distinction.

TO JAMES MONROE. MAD. MSS.

MONTP^R^, Sep^r^ 24, 1822

DEAR SIR, The mail of saturday brought me your favor of the 16th. The letters inclosed in it are returned. Accept my thanks for the odd Vol: of Cong^l^ Journals.

As I understand the case presented in the other paper inclosed, it turns on the simple question, whether the Senate have a right in their advice & consent to vary *the date* at which, according to the nomination of the President, an appointment to office is to take effect.

The subject continues to appear to me in the light which I believe I formerly intimated. The power of appointment, when not otherwise provided by the Constitution is vested in the President & the Senate. Both must concur in the act, but the act must originate with the President. He is to nominate, and their advice & consent are to make the nomination an appointment. They cannot give their advice & consent without his nomination, nor of course, differently from it. In so doing they

would originate or nominate, so far as the difference extended, and it would be his, not their advice & consent which consummated the appointment. If the President sh^d^ nominate A, to be an officer from the 1st day of May, and the Senate sh^d^ advise that he be an officer from the 1st day of Jany preceding, it is evident that for the period not embraced by the nomination of the P. the nomination w^d^ originate with the Senate, and would require his subsequent sanction to make it a joint act. During that period therefore it would be an app^t^ made by the nomination of the Senate with the advice & consent of the President; not of the President with the advice & consent of the Senate.

The case is not essentially changed by supposing the Presid^t^ to nominate A to be an officer from the 1st day of Jan^y^, and the Senate to confirm it from the 1st day of May following. Here also the nomination of the P. would not be pursued; and the Constitutional order of app^t^ would be transposed. Its intention would be violated, and he would not be bound by his nomination to give effect to the advice & consent of the Senate. The proceeding would be a nullity. Nor w^d^ this result from pure informality. The P. might have as just objections to a postponement of the date of an app^t^ for three months as good reasons for its immediate commencement. The change in the date might have an essential bearing on the public service; and a collateral or consequential one on the rights or pretensions of others in the public service. In fact, if the Senate

in disregard of the nomination of the P. would postpone the commencement of an appt for a single day, it could do it for any period however remote, & whatever might be the intermediate change of things. The date may be as material a part of the nomination, as the person named in it.

We are still suffering under the intense drought of which you witnessed its increasing effects. *Ten* weeks have now passed since we had any rain of sensible value. On some of our farms it may be sd there has been none at all. Our crops of Corn, notwithstanding, they were *forward* were so favored by the early part of the season, as to promise support, until the next summer harvest. The Tobo crop is in a sad plight, and no weather now can repair it. Your neighborhood, in Albemarle, I understand, has fared much better.

TO THOMAS JEFFERSON. MAD. MSS.

MONTPELLIER, Jany 15, 1823

DEAR SIR—I have duly received yours of the 6th, with the letters of Mr. Cabell, Mr. Gerry, and Judge Johnson. The letter from Mr. C. proposing an Extra Meeting of the Visitors, & referred to in yours was not sent, and of course is not among those returned.

The friends of the University in the Assembly seem to have a delicate task on their hands. They have the best means of knowing what is best to be

done, and I have entire confidence in their judgment as well as their good intentions. The idea of Mr. Cabell, if successful will close the business handsomely. One of the most popular objections to the Institution, I find is the expence added by what is called the ornamental style of the Architecture. Were this additional expence as great as is supposed, the objection ought the less to be regarded as it is short of the sum saved to the public by the private subscribers who approve of such an application of their subscriptions. I shall not fail to join you on receiving the expected notice from Mr. Cabell, if the weather & my health will permit; but I am persuaded it will be a supernumerary attendance, if the money be obtained, and the sole question be on its application to the new Edifice.

The two letters from Mr. Gerry are valuable documents on a subject that will fill some interesting pages in our history. The disposition of a party among us to find a cause of rupture with France, and to kindle a popular flame for the occasion, will go to posterity with too many proofs to leave a doubt with them. I have not looked over Mr. Gerry's letters to me which are very numerous, but may be of dates not connected with the period in question.[1] No resort has been had to them for ma-

[1] On February 14, 1815, James T. Austin applied to Madison for the appointment of Comptroller of the Treasury.—*Mad. MSS.* Austin's *Life of Elbridge Gerry* appeared in 1828–'29. January 22, 1832, he wrote to Madison for information concerning Gerry's services in the Constitutional Convention for use in a revised edition of his book, which, however, never was published. Elbridge Gerry, Jr., wrote

terials for his biography, perhaps from the idea that his correspondence with me may contain nothing of importance or possibly from a displeasure in the family at my disappointing the expectations of two of them. Mr. Austen the son in law, was anxious to be made Comptroller instead of Anderson, who had been a Revolutionary officer, a Judge in Tennessee, and a Senator from that State in Congress; and with equal pretentions only had in his scale the turning weight of being from the West, which considers itself without a fair proportion of National appointments. Mr. Austen I believe a man of very respectable talents, & had erroneously inferred from Mr. Gerry's communications, that I was under a pledge to name him for the vacancy when it should happen. Thinking himself thus doubly entitled to the office, his alienation has been the more decided. With every predisposition in favor of young Gerry, he was represented to me from the most friendly quarters as such a dolt, that if his youth could have been got over, it was impossible to prefer him to the place (in the Customs) to which he aspired. I believe that some peculiarities in his manner led to an exaggeration of his deficiencies and that he acquits himself well eno' in the subordinate place he now holds.

Judge Johnson's letter was well entitled to the perusal you recommended. I am glad you have

to Madison December 4, 1814, saying his father had impoverished himself and his family by his public services, and asked for an office. —*Mad. MSS.*

put him in possession of such just views of the course that ought to be pursued by the Court in delivering its opinions.[1] I have taken frequent occasions to impress the necessity of the seriatim mode; but the contrary practice is too deeply rooted to be changed without the injunction of a law, or some very cogent manifestation of the public discontent. I have long thought with the Judge also that the Supreme Court ought to be relieved from its circuit duties, by some such organization as he suggests. The necessity of it is now rendered obvious by the impossibility, in the same individual, of being a circuit Judge in Missouri &c, and a Judge of the supreme Court at the seat of Government. He is under a mistake in charging, on the Executive

[1] See Jefferson's letter in *Writings* (P. L. Ford), xii., p. 274. Judge William Johnson wrote to Jefferson Dec. 10, 1822, from Charleston: "When I was on our State bench I was accustomed to delivering seriatim opinions in our appellate Court, and was not a little surprised to find our Chief-Justice in the Supreme Court delivering all the opinions in cases in which he sat, even in some Instances when contrary to his own Judgment & vote. But I remonstrated in vain; the answer was, he is willing to take the Trouble, & it is a Mark of Respect to him. I soon, however, found out the real cause. Cushing was incompetent, Chase could not be got to think or write, Patterson was a slow man & willingly declined the Trouble, & the other two Judges [Marshall and Bushrod Washington] you know are commonly estimated as one Judge." He had succeeded in getting the court to appoint some one to deliver the opinion of the majority and leave it to the minority's discretion to record its opinion or not. The real trouble was that the court was too numerous. "Among seven men," he said, "you will always find at least one intriguer, and probably more than one who may be acted upon only by intrigue." Four judges were enough. He would have the country divided into a Southern, a Western, a Middle, and an Eastern division and a judge appointed from each.—*Jefferson MSS.*

at least, an inattention to this point. Before I left Washington I recommended to Congress the importance of establishing the Supreme Court at the seat of Gov.t, which would at once enable the Judges to go thro' the business, & to qualify themselves by the necessary studies for doing so, with justice to themselves & credit to the Nation. The reduction of the number of Judges would also be an improvement & might be conveniently effected in the way pointed out. It cannot be denied that there are advantages in uniting the local & general functions in the same persons if permitted by the extent of the Country. But if this were ever the case, our expanding settlements put an end to it. The organization of the Judiciary Department over the extent which a Federal system can reach involves peculiar difficulties. There is scarcely a limit to the distance which Turnpikes & steamboats may, at the public expence, convey the members of the Gov.t & distribute the laws. But the delays & expence of suits brought from the extremities of the Empire, must be a severe burden on individuals. And in proportion as this is diminished by giving to local Tribunals a final jurisdiction, the evil is incurred of destroying the uniformity of the law.

I hope you will find an occasion for correcting the error of the Judge in supposing that I am at work on the same ground as will be occupied by his historical view of parties, and for *animating* him to the completion of what he has begun on that subject. Nothing less than full-length likenesses

of the two great parties which have figured in the National politics will sufficiently expose the deceptive colours under which they have been painted. It appears that he has already collected materials, & I infer from your acct of his biography of Green which I have not yet seen, that he is capable of making the proper use of them.[1] A good work on the side of truth, from his pen will be an apt & effective antidote to that of his Colleague which has been poisoning the Public mind, & gaining a passport to posterity.

I was afraid the Docr was too sanguine in promising so early a cure of the fracture in your arm. The milder weather soon to be looked for, will doubtless favor the vis medicatrix which nature employs in repairing the injuries done her.

Health & every happiness.

TO EDWARD EVERETT. MAD. MSS.

MONTR, Feby 18, 1823

DR SIR I have recd your favor of the 9th, and with it the little pamphlet forwarded at the request of your Brother, for which you will please to accept & to make my acknowledgments.[2]

The pamphlet appears to have very ably & successfully vindicated the construction in the Book

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[1] *The Life and Correspondence of Nathaniel Greene*, Charleston, 1822.

[2] Alexander Hill Everett's *Europe: or a General Survey of the Present Situation of the Principal Powers; with Conjectures on their future Prospects. By a Citizen of the United States.* Boston, 1822.

on "Europe," to the provision[al] article in Mr. Jay's Treaty. History, if it sh[d] notice the subject, will assuredly view it in the light in which the "Notes" have placed it; and as affording to England a ground for intercepting American supplies of provisions to her Enemy, and to her Enemy a ground for charging on America a collusion with England for the purpose. That the B. Gov[t] meant to surrender gratuitously a maritime right of confiscation & to encourage a neutral in illegal supplies of provisions to an Enemy, by adding to their chance of gain an insurance ag[st] loss, will never be believed. The necessary comment will be that Mr. Jay tho' a man of great ability & perfect rectitude was diverted by a zeal for the object of his Mission, from a critical attention to the terms on which it was accomplished. The Treaty was fortunate in the sanction it obtained, and in the turn which circumstances gave to its fate.

Nor was this the only instance of its good fortune. In two others it was saved from mortifying results: in one by the Integrity of the British Courts of Justice, in the other by a cast of the die.

The value of the Article opening our trade with India, depended much on the question whether it authorized an *indirect* trade thither. The question was carried into the Court of King's Bench, where it was decided in our favor; the Judges stating at the same time that the decision was forced upon them by the particular structure of the article against their private conviction as to what was intended. And

this decision of that Court was confirmed by the 12 Judges.

In the other instance the question was, whether the Board of Commissioners for deciding on spoliations could take cognizance of American claims, which had been rejected by the British Tribunal in the last resort. The two British Com^rs. contended that G. B. could never be understood to submit to any extraneous Tribunal a revision of cases decided by the highest of her own. The American Com^rs. Mr. Pinkney & Mr. Gore, argued with great & just force against a construction, which as the Treaty confined the Jurisdiction of the Board to cases where redress was unattainable in the ordinary course of Judicial proceedings would have been fatal not only to the claims which had been rejected by the Tribunal in the last resort but to the residue, which it would be necessary to carry thither through the ordinary course of Justice. The four Com^rs. being equally divided; the lot for the 5^th., provided by the Treaty for such a contingency, fell on Mr. Trumbull whose casting vote obtained for the American sufferers the large indemnity at stake.

I speak on these points from Memory alone. There may be therefore if no substantial error, inaccuracies which a sight of the Archives at Washington, or the reports of adjudged Cases in England, would have prevented.

The remarks on the principle, "free ships, free Goods," I take to be fair & well considered. The extravagance of Genet drove our Sec^y. of State to the

ground of the British doctrine. And the Govt finding it could not depart from that ground without a collision or rather war with G. B. and doubting at least whether the old law of Nations on that subject did not remain in force, never contested the practice under it. The U. S. however in their Treaties have sufficiently thrown their weight into the opposite scale. And such is the number & character of like weights now in it from other powers, that it must preponderate; unless it be admitted that no authority of that kind, tho' coinciding with the dictates of reason, the feelings of humanity & the interest of the civilized world can make or expound a Law of Nations.

With regard to the rule of 1756, it is to be recollected that its original import was very different from the subsequent extensions & adaptations given to it by the belligerent policy of its parent. The rule commenced with confiscating neutral vessels trading between another Belligerent nation & its colonies, on the inference that they were hostile vessels in neutral disguise; and it ended in spoliations on neutrals trading to any ports or in any productions, of belligerents, who had not permitted such a trade in time of peace. The Author of the "Notes" is not wrong in stating that the U. S. did in some sort acquiesce in the exercise of the rule agst them, that they did not make it a cause of war, and that they were willing on considerations of expediency, to accede to a compromise on the subject. To judge correctly of the Course taken

by the Gov.t a historical view of the whole of it would be necessary. In a glancing search over the State papers, for the document from which the extract in the pamphlet was made, (it is referred to in a wrong vol: & page, being found in Vol. VI p. 240, & the extract itself not being one free from typographical change of phrase,) my eye caught a short letter of intructions to Mr. Monroe, (vol. VI, p. 180–1,) in which the stand taken by the Government is distinctly marked out. The illegality of the British principle is there asserted, nothing *declaratory* in its favor as applied even ag.st a neutral trade *direct* between a belligerent Country & its colonies, is permitted; and a stipulated concession on the basis of compromise, is limited by a reference to a former instruction of Jan.y, 1804, to that of the Russian Treaty of 1781 which protects all colonial produce converted into neutral property. This was in practice all that was essential; the American Capital being then adequate and actually applied to the *purchase* of the colonial produce transported in American vessels.

"The Examination of the subject &c" referred to in the letter of instruction as being forwarded to Mr Monroe, was a stout pamphlet drawn up by the Secretary of State.[1] It was undertaken in consequence of the heavy losses & complaints of Merchants in all our large sea ports under the predatory operation of the extended Rule of 1756. The pamphlet went into a pretty ample & minute investigation

[1] *Ante*, Vol. VII., p. 204.

of the subject, w^ch^ terminated in a confirmed conviction both of the heresy of the doctrine, and of the enormity of the practice growing out of it. I must add that it detracted much also from the admiration I had been led to bestow on the distinguished Judge of the High Court of Admiralty; not from any discovery of defect in his intellectual Powers, or Judicial Eloquence; but on account of his shifting decisions and abandonment of his independent principles. After setting out w^th^ the lofty profession of abiding by the same rules of Pub: Law when sitting in London as if a Judge at Stockholm, he was not ashamed to acknowledge that, in expounding that law he sh^d^ regard the Orders in Council of his own Gov^t^ as his Authoritative Guide. These are not his words but do him I believe no injustice. The acknowledgment ought to banish him as "Authority" from every Prize Court in the World.

I ought to have premised to any remarks on the controversy into which your brother has been drawn, that I have never seen either the Review in w^ch^ his book is criticised, or the pamphlet in w^ch^ it is combated. Having just directed the British Quarterly Review now sent me, to be discontinued, and the N. Amer: Review substituted with the back N^os^ for the last year, I may soon be able to do a fuller justice to his reply.

On adverting to the length of this letter, I fear that my pen has rec^d^ an impulse from awakened recollections which I ought more to have controuled.

The best now to be done is to add not a word, more than an assurance of my cordial respect & esteem.

TO EDWARD EVERETT. MAD. MSS.

MONTPELLIER, March 19, 1823

DEAR SIR I received, on the 15th, your favour of the 2d inst:, with the little pamphlet of remarks on your brother's "Europe."[1]

The pamphlet w^d have been much improved by softer words and harder arguments. To support its construction of Art. 18, of the Treaty of 1794, the writer ought to have shewn that there are cases in which provisions become contraband according to the Law of Nations; and that the cases are of such recurrence and importance as to make them a probable object of such an article. He does not point at a single one.

If he be not right in contending that the U. S. always resisted the Rule of 1756 he is still more astray in saying that G. B. relinquished it. The indemnities for violations of the Rule allowed by the Joint Commissioners can be no evidence of the fact. This award might be the result of the casting vote on the American side; or the concurrence of the British side, the result of the individual opinions of honest Umpires. That the British Gov^t made no such relinquishment is demonstrated by the

[1] Christopher Gore printed a reply to Everett's *Europe* in *Remarks on the Censures of the Government of the United States contained in the Ninth Chapter of "Europe,"* etc. Boston, 1822.

reasonings & adjudications of Sir W^m^ Scott, whether he be regarded as the Organ, or as the Oracle of his Gov^t^. There is no question of public law, on which he exerts his talents with more pertinacity than he does in giving effect to the rule of, 56, in all its ductile applications to emerging cases. His testimony on this point admits no reply. The payment of the awards of the Board of Com. by the British Gov^t^ is an evidence merely of its good faith; the more to its credit, the more they disappointed its calculations & wishes.

Our University has lately rec^d^ a further loan from the Legislature which will prepare the Buildings for ten Professors and about 200 Students. Should all the loans be converted into donations, at the next Session, as is generally expected, but for which no pledge has been given, the Visitors, with an annuity of $15,000 settled on the Institution, will turn their thoughts towards opening it, and to the preliminary engagement of Professors.

I am not surprised at the dilemma produced at your University by making theological professorships an integral part of the System. The anticipation of such an one led to the omission in ours; the Visitors being merely authorized to open a public Hall for religious occasions, under *impartial* regulations; with the opportunity to the different sects to establish Theological schools so near that the Students of the University may respectively attend the religious exercises in them. The village of Charlottesville also, where different religious worships will be

held, is also so near, that resort may conveniently be had to them.

A University with sectarian professorships, becomes, of course, a Sectarian Monopoly: with professorships of rival sects, it would be an Arena of Theological Gladiators. Without any such professorships, it may incur for a time at least, the imputation of irreligious tendencies, if not designs. The last difficulty was thought more manageable than either of the others.

On this view of the subject, there seems to be no alternative but between a public University without a theological professorship, and sectarian Seminaries without a University.

I recollect to have seen, many years ago, a project of a prayer, by Gov^{r} Livingston father of the present Judge, intended to comprehend & conciliate College Students of every X^{n} denomination, by a Form composed wholly of texts & phrases of scripture. If a trial of the expedient was ever made, it must have failed, notwithstanding its winning aspect from the single cause that many sects reject all set forms of Worship.

The difficulty of reconciling the X^{n} mind to the absence of a religious tuition from a University established by law and at the common expence, is probably less with us than with you. The settled opinion here is that religion is essentially distinct from Civil Gov^{t} and exempt from its cognizance; that a connexion between them is injurious to both; that there are causes in the human breast, which

ensure the perpetuity of religion without the aid of the law; that rival sects, with equal rights, exercise mutual censorships in favor of good morals; that if new sects arise with absurd opinions or overheated maginations, the proper remedies lie in time, forbearance and example; that a legal establishment of religion without a toleration could not be thought of, and with a toleration, is no security for public quiet & harmony, but rather a source itself of discord & animosity; and finally that these opinions are supported by experience, which has shewn that every relaxation of the alliance between Law & religion, from the partial example of Holland, to its consummation in Pennsylvania Delaware N. J., &c, has been found as safe in practice as it is sound in theory. Prior to the Revolution, the Episcopal Church was established by law in this State. On the Declaration of independence it was left with all other sects, to a self-support. And no doubt exists that there is much more of religion among us now than there ever was before the change; and particularly in the Sect which enjoyed the legal patronage. This proves rather more than, that the law is not necessary to the support of religion.

With such a public opinion, it may be expected that a University with the feature peculiar to ours will succeed here if anywhere. Some of the Clergy did not fail to arraign the peculiarity; but it is not improbable that they had an eye to the chance of introducing their own creed into the professor's chair. A late resolution for establishing an Episco-

pal school within the College of William & Mary, tho' in a very guarded manner, drew immediate animadversions from the press, which if they have not put an end to the project, are a proof of what would follow such an experiment in the University of the State, endowed and supported as this will be, altogether by the Public authority and at the common expence.

I know not whence the rumour sprang of my being engaged in a Pol^{l} History of our Country. Such a task, c^{d} I presume on a capacity for it, belongs to those who have more time before them than the remnant to w^{ch} mine is limited.

On reviewing my political papers & correspondence, I find much that may deserve to be put into a proper state for preservation; and some things that may not in equal amplitude be found elsewhere. The case is doubtless the same with other individuals whose public lives have extended thro' the same long & pregnant period. It has been the misfortune of history, that a personal knowledge and an impartial judgment of things rarely meet in the historian. The best history of our Country therefore must be the fruit of contributions bequeathed by cotemporary actors & witnesses, to successors who will make an unbiassed use of them. And if the abundance & authenticity of the materials which still exist in the private as well as public repositories among us sh^{d} descend to hands capable of doing justice to them, the American History may be expected to contain more truth, and lessons, certainly

not less valuable, than those of any Country or age.

I have been so unlucky as not yet to have received the N^os^ of the N. Am^n^ Review written for the . I expect them every moment, but the delay has deprived me as yet of the criticism in that work on Your Brother's Book.

The difference to w^ch^ you allude between the profits of authorship in England & in the U. S. is very striking. It proceeds, mainly, no doubt from the difference of the area over w^ch^ the population is spread, and of the manner in w^ch^ the aggregate wealth is distributed in the 2 Countries. The number of people in this is perhaps equal to that in England, and the number of readers of popular works at least, probably not less, if not greater. But in their scattered situation here, they are with more difficulty supplied with new publications than when they are condensed within an easy reach of them, and where indeed a vast proportion, being in the Metropolis, are on the same spot with the printing offices. But the unequal division of wealth in Eng^d^ enters much into the advantage given there to Authors & Editors. With us there are more readers than buyers of books. In England there are more buyers than readers. Hence those Gorgeous Editions, which are destined to sleep in the private libraries of the Rich whose vanity aspires to that species of furniture, or who give that turn to their public spirit & patronage of letters.

Whatever may be the present obstacles to the

diffusion of literature in our Country, it is a consolation that its growing improvements are daily diminishing them, and that in the meantime individuals are seen making generous efforts to overcome them. With my wishes for the success of yours, I repeat assurances of my esteem & cordial respect.

ANSWERS TO QUESTIONS CONCERNING SLAVERY.[1] [1823].

MAD. MSS.

1. Yes.

2. Employs an overseer for that number of slaves with few exceptions

3. ——

4. Not uncommonly the land, sometimes the slaves, very rarely both together

5. The common law as in England governs the relation between land & debts; Slaves are often sold under execution for debt; the proportion to the whole, cannot be great within a year, and varies of course, with the amount of debts, and the urgency of creditors.

6. Yes.

[1] Jedediah Morse wrote to Madison from New Haven March 14, 1823, sending a printed list of questions "from a respectable Correspondent in Liverpool, deeply engaged in the Abolition of the Slave Trade, and the Amelioration of the condition of Slaves," and asking Madison to furnish brief answers. The questions follow:

1. Do the planters generally live on their own estates?

2. Does a planter with ten or fifteen slaves employ an overlooker, or does he overlook his slaves himself?

3. Obtain estimates of the culture of Sugar and Cotton, to show what difference it makes where the planter resides on his estate, or where he employs attorneys, overlookers, &c.

4. Is it a common or general practice to mortgage slave estates?

5. Are sales of slave estates very frequent under execution for debt, and what proportion of the whole may be thus sold annually?

6. Does the Planter possess the power of selling the different branches of a family separate?

7–10. Instances are rare where the Tobacco planters do not raise their own provisions.

11. The proper comparison not between the culture of Tob° & that of Sugar and Cotton, but between each of these cultures & that of provisions. The Tob° planter finds it cheaper to make them a part of his crop than to buy them. The Cotton & Sugar planters to buy them, where this is the case, than to raise them. The term cheaper embraces the comparative facility & certainty, of procuring the supplies.

12. Generally best cloathed, when from the household manufactures, which are increasing.

14, 15. Slaves seldom employed in regular task work. They prefer it only when rewarded with the surplus time gained by their industry.

16. Not the practice to substitute an allowance of time for the allowance of provisions.

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7. When the prices of produce, Cotton, Sugar, &c., are high, do the Planters purchase, instead of raising, their corn and other provisions?

8. When the prices of produce are low, do they then raise their own corn and other provisions?

9. Do the negroes fare better when the Corn, &c., is raised upon their master's estate, or when he buys it?

10. Do the tobacco planters in America ever buy their own Corn or other food, or do they always raise it?

11. If they always, or mostly, raise it, can any other reason be given for the difference of the system pursued by them and that pursued by the Sugar and Cotton planters than that the cultivation of tobacco is less profitable than that of Cotton or Sugar?

12. Do any of the Planters manufacture the packages for their produce, or the clothing for their negroes? and if they do, are their negroes better clothed than when clothing is purchased?

13. Where, and by whom, is the Cotton bagging of the Brazils made? is it principally made by free men or slaves?

14. Is it the general system to employ the negroes in task work, or by the day?

15. How many hours are they generally at work in the former case? how many in the latter? Which system is generally preferred by the master? which by the slaves?

16. Is it common to allow them a certain portion of time instead

17. Very many & increasing with the progressive subdivisions of property; the proportion cannot be stated.

18, 19. The fewer the slaves & the fewer the holders of slaves, the greater the indulgence & familiarity. In districts comprising large masses of slaves; there is no difference in their condition whether held in small or large numbers, beyond the difference in the dispositions of the owners, and the greater strictness of attention where the number is greater.

20. There is no general system of religious instruction. There are few spots where religious worship is not within reach, and to which they do not resort. Many are regular members of Congregations chiefly Baptist; and some Preachers also, tho' rarely able to read.

21. Not common; but the instances are increasing.

22. The accommodation not unfrequent where the plantations are very distant. The slaves prefer wives on a different plantation; as affording occasions & pretexts for going abroad, and exempting them on holidays from a share of the little calls to which those at home are liable.

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of their allowance of provisions? In this case, how much is allowed? Where the slaves have the option, which do they generally choose? On which system do the slaves look the best, and acquire the most comforts?

17. Are there many small plantations where the owners possess only a few slaves? What proportion of the whole may be supposed to be held in this way?

18. In such cases, are the slaves treated or almost considered a part of the family?

19. Do the slaves fare the best when their situations and that of the master are brought nearest together?

20. In what state are the slaves as to religion or religious instruction?

21. Is it common for the slaves to be regularly married?

22. If a man forms an attachment to a woman on a different or distant plantation, is it the general practice for some accommodation to take place between the owners of the man and woman, so that they may live together?

23. The remarkable increase of slaves, as shewn by the Census, results from the comparative defect of moral and prudential restraint on the Sexual connexion; and from the absence at the same time, of that counteracting licentiousness of intercourse, of which the worst examples are to be traced where the African trade as in the W. Indies keeps the number of females, less than of the males

24. The annual expense of food & raiment in rearing a child, may be stated at about 8, 9, or 10 dollars; and the age at which it begins to be gainful to its owner, about 9 or 10 years.

25. The practice here does not furnish data for a comparison of cheapness, between these two modes of cultivation.

26. They are sometimes hired for field labour in time of harvest, and on other particular occasions.

27. The examples are too few to have established any such relative prices.

28. See the Census.

29. Rather increases.

30.——

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23. In the United States of America, the slaves are found to increase at about the rate of 3 ℔ cent. ℔ annum. Does the same take place in other places? Give a census, if such is taken. Show what cause contributes to this increase or what prevents it where it does not take place.

24. Obtain a variety of estimates from the Planters of the cost of bringing up a child, and at what age it becomes a clear gain to its owner.

25. Obtain information respecting the comparative cheapness of cultivation by slaves or by free men.

26. Is it common for the free blacks to labour in the field?

27. Where the labourers consist of free blacks and of white men, what are the relative prices of their labour when employed about the same work?

28. What is the proportion of free blacks and slaves?

29. Is it considered that the increase in the proportion of free blacks to slaves increases or diminishes the danger of insurrection?

30. Are the free blacks employed in the defence of the Country, and do they and the Creoles preclude the necessity of European troops?

31. More closely with the slaves, and more likely to side with them in a case of insurrection

32. Generally idle and depraved; appearing to retain the bad qualities of the slaves with whom they continue to associate, without acquiring any of the good ones of the whites, from whom [they] continue separated by prejudices agst their colour & other peculiarities.

33. There are occasional instances in the present legal condition of leaving the State

34. None

35. ——

J. M. presents his respects to Dr. Morse, with the annexed answers to the Queries accompanying his letter of the 14th inst; so far as they were applicable to this State. The answers c. not conveniently be extended as much as might perhaps be desired. Their brevity and inadequacy will be an apology for requesting, that if any use be made of them, it may be done without a reference to the source furnishing them.

MONTP^{R}, Mar. 28, 1823.

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31. Do the free blacks appear to consider themselves as more closely connected with the slaves or with the white population? and in cases of insurrection, with which have they generally taken part?

32. What is their general character with respect to industry and order, as compared with that of the slaves?

33. Are there any instances of emancipation in particular estates, and what is the result?

34. Is there any general plan of emancipation in progress, and what?

35. What was the mode and progress of emancipation in those States in America where slavery has ceased to exist?—*Mad. MSS.*

TO WILLIAM EUSTIS. MAD. MSS.

MONTP^{R}, May 22, 1823

DEAR SIR I rec^{d} by the last mail, your welcome fav^{r} of the 10th instant. The newspapers had prepared me for the triumphant vote which restores a prodigal sister to the bosom of the Republican family, and evinces a return of grateful feelings for a revolutionary worthy.[1] I congratulate you very sincerely on this event, with every wish that your administration may be as happy to yourself as I am confident it will be propitious to the welfare of those who have called you into it; & I may add of those who resisted the call. The people are now able every where to compare the principles & policy of those who have borne the name of Republicans or Democrats, with the career of the adverse party; and to see & feel that the former are as much in harmony with the spirit of the nation & the genius of the Gov^{t} as the latter was at variance with both.

A great effort has been made by the fallen party to proclaim & eulogize an amalgamation of political sentiments & views. Who could be duped by it, when unmasked by the electioneering violence of the party where strong, and intrigues where weak?

The effort has been carried even farther. It has been asserted that the Republicans have abandoned their Cause, and gone over to the policy of their opponents. Here the effort equally fails. It is true that under a great change of foreign circum-

[1] Eustis had just been elected governor of Massachusetts.

stances, and with a doubled population, & more than doubled resources, the Republican party has been reconciled to certain measures & arrangements which may be as proper now as they were premature and suspicious when urged by the Champions of federalism. But they overlook, the overbearing & vindictive spirit, the apocryphal doctrines, & rash projects, which stamped on federalism its distinctive character; and which are so much in contrast with the unassuming & unavenging spirit which has marked the Republican Ascendency.

There has been in fact a deep distinction between the two parties or rather, between the mass of the Nation, and the part of it which for a time got possession of the Gov.t. The distinction has its origin in the confidence of the former, in the capacity of mankind for self Gov.t and in a distrust of it by the other or by its leaders; and is the key to many of the phenomena presented by our political History. In all free Countries somewhat of this distinction must be looked for; but it can never be dangerous in a well informed Community and a well constructed Gov.t both of which I trust will be found to be the happy lot of the U. S. The wrong paths into which the fathers may stray will warn the sons into the right one; according to the example under your own eye, which has touched your heart with such appropriate feelings.

As you say nothing of the state of your health I flatter myself it has undergone no unfavorable change, and that it will more than suffice for the

labors thrown on your hands. Mrs. M. who shares largely in the gratification afforded by your letter, joins in this, and in every other wish that can express an affectionate esteem for yourself & Mrs. Eustis.

TO THOMAS JEFFERSON. MAD. MSS.

MONTPELLIER, June 27, 1823

DEAR SIR I return the copy of your letter to Judge Johnson inclosed in your favor of the —— instant.[1] Your statement relating to the farewell Address of Gen! Washington is substantially correct. If there be any circumstantial inaccuracy, it is in imputing to him more agency in composing the document than he probably had. Taking for granted that it was drawn up by Hamilton, the best conjecture is that the General put into his hands his own letter to me suggesting his general ideas, with the paper prepared by me in conformity with them; and if he varied the draught of Hamilton at all, it was by a few verbal or qualifying amendments only.[2] It is very inconsiderate in the friends of Gen! Washington to make the merit of the Address a question between him & Col: Hamilton, & somewhat extraordinary, if countenanced by those who possess the files of the General where it is presumed the truth might be traced. They ought to claim for him the merit only of cherishing the principles & views

[1] See Jefferson to William Johnson, Oct. 27, 1822, and June 12, 1823. —*Jefferson's Writings* (P. L. Ford), xii., 246, 252, n.

[2] See *ante*, VI., No. 106, n.; also *Writings of Washington* (W. C. Ford), xii., 123; xiii., 194, 277.

addressed to his Country, & for the Address itself the weight given to it by his sanction; leaving the literary merit whatever it be to the friendly pen employed on the occasion, the rather as it was never understood that Washington valued himself on his writing talent, and no secret to some that he occasionally availed himself of the friendship of others whom he supposed more practised than himself in studied composition. In a general view it is to be regretted that the Address is likely to be presented to the public not as the pure legacy of the Father of his Country, as has been all along believed, but as the performance of another held in different estimation. It will not only lose the charm of the name subscribed to it; but it will not be surprizing if particular passages be understood in new senses, & with applications derived from the political doctrines and party feelings of the discovered Author.

At some future day it may be an object with the curious to compare the two draughts made at different epochs with each other, and the letter of Gen^{l} W. with both. The comparison will shew a greater conformity in the first with the tenor & tone of the letter, than in the other; and the difference will be more remarkable perhaps in what is omitted, than in what is added in the Address as it stands.

If the solicitude of Gen^{l} Washington's connexions be such as is represented, I foresee that I shall share their displeasure, if public use be made of what passed between him & me at the approaching expiration of his first term. Altho' it be impossible

to question the facts, I may be charged with indelicacy, if not breach of confidence, in making them known; and the irritation will be the greater, if the Authorship of the Address continue to be claimed for the signer of it; since the call on me on one occasion, will favor the allegation of a call on another occasion. I hope therefore that the Judge will not understand your communication as intended for the new work he has in hand. I do not know that your statement would justify all the complaint its public appearance might bring on me; but there certainly was a species of confidence at the time in what passed, forbidding publicity, at least till the lapse of time should wear out the seal on it, & the truth of history should put in a fair claim to such disclosures.

I wish the rather that the Judge may be put on his guard, because with all his good qualities, he has been betrayed into errors which shew that his discretion is not always awake. A remarkable instance is his ascribing to Gouverneur Morris the Newburg letters written by Armstrong, which has drawn from the latter a corrosive attack which must pain his feelings, if it should not affect his standing with the Public. Another appears in a stroke at Judge Cooper in a letter to the Education Committee in Kentucky, which has plunged him into an envenomed dispute with an antagonist, the force of whose mind & pen you well know. And what is worse than all, I perceive from one of Cooper's publications casually falling within my notice, that,

among the effects of Judge Johnson's excitement, he has stooped to invoke the religious prejudices circulated agst Cooper.

Johnson is much indebted to you for your remarks on the definition of parties. The radical distinction between them has always been a confidence of one, and distrust of the other, as to the capacity of Mankind for self Government. He expected far too much, in requesting a precise demarkation of the boundary between the Federal & the State Authorities. The answer would have required a critical commentary on the whole text of the Constitution. The two general Canons you lay down would be of much use in such a task; particularly that which refers to the sense of the State Conventions, whose ratifications alone made the Constitution what it is. In exemplifying the other Canon, there are more exceptions than occurred to you, of cases in which the federal jurisdiction is extended to controversies between Citizens of the same State. To mention one only: In cases arising under a Bankrupt law, there is no distinction between those to which Citizens of the same & of different States are parties.

But after surmounting the difficulty in tracing the boundary between the General & State Gov^{ts} the problem remains for maintaining it in practice; particularly in cases of Judicial cognizance. To refer every point of disagreement to the people in Conventions would be a process too tardy, too troublesome, & too expensive; besides its tendency to lessen a salutary veneration for an instrument

so often calling for such explanatory interpositions. A paramount or even a definitive Authority in the individual States, would soon make the Constitution & laws different in different States, and thus destroy that equality & uniformity of rights & duties which form the essence of the Compact; to say nothing of the opportunity given to the States individually of involving by their decisions the whole Union in foreign Contests. To leave conflicting decisions to be settled between the Judicial parties could not promise a happy result. The end must be a trial of strength between the Posse headed by the Marshal and the Posse headed by the Sheriff. Nor would the issue be safe if left to a compromise between the two Gov^{ts} the case of a disagreement between different Gov^{ts} being essentially different from a disagreement between branches of the same Gov^{t}. In the latter case neither party being able to consummate its will without the concurrence of the other, there is a necessity on both to consult and to accommodate. Not so, with different Gov^{ts} each possessing every branch of power necessary to carry its purpose into compleat effect. It here becomes a question between Independent Nations, with no other *dernier* resort than physical force. Negotiation might indeed in some instances avoid this extremity; but how often would it happen, among so many States, that an unaccommodating spirit in some would render that resource unavailing.

We arrive at the agitated question whether the Judicial Authority of the U. S. be the constitutional

resort for determining the line between the federal & State jurisdictions. Believing as I do that the General Convention regarded a provision within the Constitution for deciding in a peaceable & regular mode all cases arising in the course of its operation, as essential to an adequate System of Govt: that it intended the Authority vested in the Judicial Department as a final resort in relation to the States, for cases resulting to it in the exercise of its functions, (the concurrence of the Senate chosen by the State Legislatures, in appointing the Judges, and the oaths & official tenures of these, with the surveillance of public Opinion, being relied on as guarantying their impartiality); and that this intention is expressed by the articles declaring that the federal Constitution & laws shall be the supreme law of the land, and that the Judicial Power of the U. S. shall extend to all cases arising under them: Believing moreover that this was the prevailing view of the subject when the Constitution was adopted & put into execution; that it has so continued thro' the long period which has elapsed; and that even at this time an appeal to a national decision would prove that no general change has taken place: thus believing I have never yielded my original opinion indicated in the "Federalist" Nº 39 to the ingenious reasonings of Col: Taylor agst this construction of the Constitution.[1]

I am not unaware that the Judiciary career has

[1] *Construction Construed*, by John Taylor, of Caroline. Richmond 1820.

not corresponded with what was anticipated. At one period the Judges perverted the Bench of Justice into a rostrum for partizan harangues. And latterly the Court, by some of its decisions, still more by extrajudicial reasonings & dictá, has manifested a propensity to enlarge the general authority in derogation of the local, and to amplify its own jurisdiction, which has justly incurred the public censure. But the abuse of a trust does not disprove its existence. And if no remedy of the abuse be practicable under the forms of the Constitution, I should prefer a resort to the Nation for an amendment of the Tribunal itself, to continual appeals from its controverted decisions to that Ultimate Arbiter.

In the year 1821, I was engaged in a correspondence with Judge Roane, which grew out of the proceedings of the Supreme Court of the U. S.[1] Having said so much here I will send you a copy of my letters to him as soon as I can have a legible one made, that a fuller view of my ideas with respect to them may be before you.

I agree entirely with you on the subject of seriatim opinions by the Judges, which you have placed in so strong a light in your letter to Judge Johnson, whose example it seems is in favor of the practice. An argument addressed to others, all of whose dislikes to it are not known, may be a delicate experiment. My particular connexion with Judge Todd, whom I expect to see, may tempt me to touch

[1] *Ante*, pp. 25, 65.

on the subject; and, if encouraged, to present views of it w^ch^ thro' him may find the way to his intimates.

In turning over some bundles of Pamphlets, I met with several Copies of a very small one which at the desire of my political associates I threw out in 1795. As it relates to the state of parties I inclose a Copy. It had the advantage of being written with the subject full & fresh in my mind, and the disadvantage of being hurried, at the close of a fatiguing session of Cong^s^ by an impatience to return home, from which I was detained by that Job only. The temper of the pamphlet is explained if not excused by the excitements of the period.

Always & Affectionately yours.

TO JAMES MONROE. CHIC. HIST. SOC. MSS.

July—1823

D^R^ SIR,—I am giving you more trouble & of a more disagreeable sort than I c^d^ wish, but an enquiry into the case of Jackson's app^t^ in May 1814 involves circumstances not to be fully elucidated without a resort which you have kindly permitted.[1]

[1] On February 5, 1824, Madison wrote to Monroe again saying he wished information obtained from Jackson to show what was the form and date of the appointment of Major General accepted by him in his letter of June 20, 1814, to the Secretary of War, and when the appointment was to take effect. The reason for his questions is explained in his statement prepared in 1824 (but never printed) entitled: "Review of a statement attributed to Genl. John Armstrong, with an appendix of illustrative documents." The review said that in the *Literary and Scientific Repository*, October, 1821, a statement appeared stating that early in May, 1814, Armstrong had proposed that Jackson

The Secy. of War proposed on the 14th May in my absence from Washington to make him a Brig[r] with a brevet of Maj[r] Gen[l] till Hampton's vacancy c[d] be filled by the Senate. I answered on the 17th

be appointed a Brigadier with the brevet rank of Major General, until a vacancy should permit his appointment as Major General, and that Madison had approved the arrangement. A communication was, accordingly, made to Jackson; but when Harrison's resignation was received and reported to Madison he was undecided. Armstrong, however, acted on the President's first approval and sent a commission to Jackson. The letters gathered by Madison showed: that on May 14, 1814, Armstrong had proposed that Jackson be made a Brigadier with the brevet of Major General; that the President ordered Armstrong on May 17 to send a commission for that rank; that on May 20 Armstrong reported Harrison's resignation without any suggestion concerning Jackson; that on May 24 the President wrote Armstrong that Harrison's resignation opened the way for a Major General's commission for Jackson, but he would suspend a final decision. In the meantime he returned the commission of Brevet Major General because he had not received the preliminary one of Brigadier. On May 22 Armstrong wrote to Jackson that commissions would be prepared appointing him Brigadier and Brevet Major General. On June 8 Jackson replied accepting this appointment. On May 28 Armstrong informed Jackson of his appointment as Major General to succeed Harrison. It was evident, according to Madison, that Armstrong was endeavoring to convey the false impression that he, and not Madison, really made the appointment. Madison's statement proceeds:

"Should it be asked why the individual in question [Armstrong] was placed, and, after such developments in his career, continued, at the head of the War Department, the answer will readily occur to those best acquainted with the circumstances of the period. Others may be referred for an explanation to the difficulty which had been felt in its fullest pressure, of obtaining services which would have been preferred; several eminent citizens to whom the station had been offered having successively declined it. It was not unknown at the time that objections existed to the person finally appointed, as appeared when his nomination went to the Senate, where it received the reluctant sanction of a scanty majority. Nor was the President unaware or unwarned of the temper and turn of mind ascribed to him, which

send me the Com^{n}. On the 20th He mentioned *nakedly* among other things that Harrison had resigned and enclosed one Com^{n} with^{t} alluding to any enclosure. My answ^{r} on the 24 shews that I understood it to be for the brevet, as it intimated the omission of the preliminary one of Brig^{r}. The Sec^{y} was silent & no other Comission sent.

What then was the identical Com^{n} of Maj^{r} Gen^{l} sent to J—n by the Se^{y} on the 28th of May?

Was it the Com^{n} enclosed to me on the 20 and understood to be for the Brevet: and if so was it a blank one or filled up with the Brevet app^{t} if the former it was used for a purpose contrary to the known intention of the P^{t}.: if the latter there must have been an erasure w^{ch} c^{d} only be ascertained by the Com^{n} itself in the hands of J—n.

C^{d} it have been a blank Comn signed & left in the Dept for ordinary contingencies & inferior grades? This is rendered the more improbable by the apparent necessity of my calling for Com. to be signed—and by the one actually enclosed to me the 20th. If

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might be uncongenial with the official relations in which he was to stand. But these considerations were sacrificed to recommendations from esteemed friends, a belief that he possessed, with known talents, a degree of military information which might be useful, and a hope that a proper mixture of conciliating confidence and interposing controul, would render objectionable peculiarities less in practice than in prospect. And as far as disappointments were experienced, it was thought better, to bear with them, than to incur, anew, the difficulty of finding a successor, with the inconveniences of an interval and a forced change in the head of the department of War, in the midst of war. This view of the subject continued to prevail, till the departure of the Secretary took place."—*Mad. MSS.*

any lights can be properly obtained on this point I s^d^ be glad of them. The point itself is more than of mere curiosity.

When do you make your next visit to Albemarle?

TO GEORGE HAY MAD. MSS.

MONTPELLIER, August 23, 1823.

DEAR SIR I have received your letter of the 11th, with the Newspapers containing your remarks on the present mode of electing a President, and your proposed remedy for its defects. I am glad to find you have not abandoned your attention to great Constitutional topics.

The difficulty of finding an unexceptionable process for appointing the Executive Organ of a Government such as that of the U. S. was deeply felt by the Convention; and as the final arrangement of it took place in the latter stage of the Session, it was not exempt from a degree of the hurrying influence produced by fatigue and impatience in all such Bodies, tho' the degree was much less than usually prevails in them.[1]

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[1] On January 3, 1824, Madison wrote to George McDuffie who had introduced a joint resolution in Congress December 22 (*Annals of Cong., 18 Cong., 1st Sess.*, Vol. I, p. 851) for amending the provision of the Constitution relative to the election of President and Vice-President:

"I agree equally with them in preferring an eventual choice of Presidt. & V. Presidt. by a joint ballot of the two Houses of Congress, to the existing provision for such a choice by the H. of Reps. voting by States. The Committee appear to me to be very right also in linking the amendments together, as a compromise between States who may mutually regard them as concessions.

The part of the arrangement which casts the eventual appointment on the House of Rep^s voting by States, was, as you presume, an accommodation to the anxiety of the smaller States for their sovereign

"In the amendment relating to District elections of representatives it is provided that the Districts shall not be alterable previous to another Census, and the 'Joint Resolution' extends the prohibition to the Electoral Districts. As the return of a Census may not be within less than ten years, the regulation may become very inconvenient & dissatisfactory especially in new States, within different parts of which the population will increase at such unequal rates. It would be a better provision that no change of Districts should take place within a period of preceding elections next in view; and to apply the rule to cases where Congress may have a right to interfere, as well as to the ordinary exercise of the power by the States.

"The power given by the 'Joint Resolution' to the Electors of P. & V. P. to fill up their own vacancies, & to appoint the two additional Electors, is liable to the Remark, that where there may be but a single Elector, casualities to him might deprive his State of its two additional Electors; and that a single Elector with a right to appoint two others, would have in effect three votes; a situation exposing him in a particular manner, to temptations of which the Constitution is jealous. The objection to such an augmented power applies, generally, with a force proportioned to the powers of Electors allotted to a State. There may be some difficulty in finding a satisfactory remedy for the case. In States entitled to but one Representative, the single district might choose the three Electors. In States having two Reps., each of its two Districts, by choosing two Electors, would furnish the quota of four. In all other States the difficulty would occur. And as uniformity is so justly an object, it would seem best to let the State Legislatures appoint or provide for the appointment of the two additional Electors, and for filling the Electoral vacancies; limiting the time within which the appointment must be made.

"Would it not be better to retain the word 'immediately' in requiring the two Houses to proceed to the choice of P. & V. P., than to change it into 'without separating.' If the change could quicken and ensure a final ballot, it would certainly be a good one. But as it might give rise to disputes as to the validity of an Election, after an adjournment and separation forced by a repetition of abortive ballotings, the existing term might perhaps as well remain & take its chance

equality, and to the jealousy of the larger towards the cumulative functions of the Senate. The agency of the H. of Repˢ was thought safer also than that of the Senate, on account of the greater number of its

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of answering its purpose. The distinction between a regulation which is directory only, and one a departure from which would have a viciating effect, is not always obvious; and in the delicate affair of electing a Chief Magistrate it will be best to hazard as little as possible a discussion of it.

"In the appeal to the second meeting of Electors, their choice is limited to the *two* names having the highest number of votes given at the first meeting. As there may be an equality of votes among several highest on the list, the option ought to be enlarged accordingly, as well with a view to obviate uncertainty, as to deal equally with equal pretensions.

"The expedient of resorting to a second meeting of the Presidential Electors, in order to diminish the risk of a final resort to Congress, has certainly much to recommend it. But the evil to be guarded as it would lose not a little of its formidable aspect, by the substitution of a joint ballot of the members of Congress, for a vote by States in the Representative branch: which the prolonged period during which the Electors must be in appointment before their final votes would be given, relinquishes the contemplated advantage of functions to be so quickly commenced and closed as to preclude extraneous management & intrigue. The increased trouble and expence are of minor consideration, tho' not to be entirely disregarded. It may be more important to remark, that in cases where from an equality of votes in the Electoral List, more than two names might be sent back to the Electors, very serious embarrassments & delays might happen from miscalculations or perverse dispositions in some of so many distinct meetings, and that after all, no perfect security would exist agst. an ultimate devolution of the choice on Congress. Still it may be a fair question whether a second meeting of Electors, with its prospect of preventing an election by the members of the Legislature, would not be preferable to a single meeting with the greater probability of a resort to them."—Copy kindly loaned by W. H. Gibbes, Esq. of Columbia, S. C.

On January 30, 1826, he wrote to Robert Taylor, concerning the proposed amendment to the Constitution introduced in the Senate Dec. 15, 1825.

members. It might indeed happen that the event would turn on one or two States having one or two Rep.s only; but even in that case, the representations of most of the States being numerous, the House

"It seems to be generally agreed that some change in the mode of electing the Executive Magistrate is desirable, that would produce more uniformity & equality, with a better security for concentrating the major will of the nation, and less risk of an eventual decision in the national Legislature.

"The amendment reported by the Committee of the Senate is very ably prepared & recommended. But I think there are advantages in the intervention of Electors, and inconveniences in a direct vote by the people, which are not sufficiently adverted to in the Report.

"One advantage of Electors is, that as Candidates, & still more as competitors personally known in the Districts, they will call forth the greater attention of the people: another advantage is, that altho' generally the mere mouths of their Constituents, they may be intentionally left sometimes to their own judgment, guided by further information that may be acquired by them: and finally, what is of material importance, they will be able, when ascertaining, which may not be till a late hour, that the first choice of their constituents is utterly hopeless, to substitute in the electoral vote the name known to be their second choice.

"If the election be referred immediately to the people, however they may be liable to an excess of excitement on particular occasions, they will on ordinary occasions and where the candidates are least known feel too little; yielding too much to the consideration that in a question depending on millions of votes individual ones are not worth the trouble of giving them. There would be great encouragement therefore for active partizans to push up their favorites to the upper places on the list and by that means force a choice between candidates, to either of whom others lower on the list would be preferred. Experience gives sufficient warning of such results.

"An election by Districts, instead of general tickets, & State Legislatures, and an avoidance of a decision by the House of Representatives voting by States, would certainly be changes much for the better: and a combination of them may be made perhaps acceptable both to the large and to the small States. I subjoin the sketch of an elective process which occurred to me some years ago, but which has never been so thoroughly scrutinized as to detect all the flaws that may lurk in it."—*Chic. Hist. Soc. MSS.*

would present greater obstacles to corruption than the Senate with its paucity of Members. It may be observed also, that altho' for a certain period the evil of State votes given by one or two individuals, would be extended by the introduction of new States, it would be rapidly diminished by growing populations within extensive territories. At the present period, the evil is at its maximum. Another Census will leave none of the States existing or in Embryo, in the numerical rank of R. I. & Del, nor is it impossible, that the progressive assimilation of local Institutions, laws & manners, may overcome the prejudices of those particular States against an incorporation with their neighbours.

But with all possible abatements, the present rule of voting for President by the H. of Rep^s^ is so great a departure from the Republican principle of numerical equality, and even from the federal rule which qualifies the numerical by a State equality, and is so pregnant also with a mischievous tendency in practice, that an amendment of the Constitution on this point is justly called for by all its considerate & best friends.

I agree entirely with you in thinking that the election of Presidential Electors by districts, is an amendment very proper to be brought forward at the same time with that relating to the eventual choice of President by the H. of Rep^s^ The district mode was mostly, if not exclusively in view when the Constitution was framed and adopted; & was exchanged for the general ticket & the legislative

election, as the only expedient for baffling the policy of the particular States which had set the example. A constitutional establishment of that mode will doubtless aid in reconciling the smaller States to the other change which they will regard as a concession on their part. And it may not be without a value in another important respect. The States when voting for President by general tickets or by their Legislatures, are a string of beads; when they make their elections by districts, some of these differing in sentiment from others, and sympathizing with that of districts in other States, they are so knit together as to break the force of those geographical and other noxious parties which might render the repulsive too strong for the cohesive tendencies within the Political System.

It may be worthy of consideration whether in requiring elections by districts, a discretion might not be conveniently left with the States to allot two members to a single district. It would manifestly be an important proviso, that no new arrangement of districts should be made within a certain period previous to an ensuing election of President.

Of the different remedies you propose for the failure of a majority of Electoral votes for any one Candidate, I like best that which refers the final choice, to a joint vote of the two Houses of Congress, restricted to the two highest names on the Electoral lists. It might be a question, whether the *three* instead of the *two* highest names might not be put within the choice of Congress, inasmuch as it

not unfrequently happens, that the Candidate third on the list of votes would in a question with either of the two first outvote him, and, consequently be the real preference of the voters. But this advantage of opening a wider door & a better chance to merit, may be outweighed by an increased difficulty in obtaining a prompt & quiet decision by Congress with three candidates before them, supported by three parties, no one of them making a majority of the whole.

The mode which you seem to approve, of making a *plurality* of Electoral votes a definitive appointment would have the merit of avoiding the Legislative agency in appointing the Executive; but might it not, by multiplying hopes and chances, stimulate intrigue & exertion, as well as incur too great a risk of success to a very inferior candidate? Next to the propriety of having a President the real choice of a majority of his Constituents, it is desirable that he should inspire respect & acquiescence by qualifications not suffering too much by comparison.

I cannot but think also that there is a strong objection to undistinguishing votes for President & Vice President; the highest number appointing the former the next the latter. To say nothing of the different services (except in a rare contingency) which are to be performed by them, occasional *transpositions* would take place, violating equally the mutual consciousness of the individuals, & the public estimate of their comparative fitness.

Having thus made the remarks to which your communication led, with a frankness which I am sure you will not disapprove, whatever errors you may find in them, I will sketch for your consideration a substitute which has occurred to myself for the faulty part of the Constitution in question

"The Electors to be chosen in districts, not more than two in any one district, and the arrangement of the districts not to be alterable within the period of ——— previous to the election of President. Each Elector to give two votes, one naming his first choice, the other his next choice. If there be a majority of all the votes on the first list for the same person, he of course to be President; if not, and there be a majority, (which may well happen) on the other list for the same person, he then to be the final choice; if there be no such majority on either list, then a choice to be made by joint ballot of the two Houses of Congress, from the two names having the greatest number of votes on the two lists taken together." Such a process would avoid the inconvenience of a second resort to the Electors; and furnish a double chance of avoiding an eventual resort to Congress. The same process might be observed in electing the Vice President.

Your letter found me under some engagements which have retarded a compliance with its request, and may have also rendered my view of the subject presented in it more superficial than I have been aware. This consideration alone would justify my wish not to be brought into the public discussion.

But there is another in the propensity of the Moment, to view everything, however abstract from the Presidential election in prospect, thro' a medium connecting it with that question; a propensity the less to be excused as no previous change of the Constitution can be contemplated, and the more to be regretted, as opinions and commitments formed under its influence, may become settled obstacles at a practicable season.

Be pleased to accept the expression of my esteem and my friendly respects.

TO THOMAS JEFFERSON MAD. MSS.

MONTP^{R}., Sept^{r} 6, 1823.

DEAR SIR,—I return the two communications from the President inclosed in your letter of Aug. 30.

I am afraid the people of Spain as well as of Portugal need still further light & heat too from the American example before they will be a Match for the armies, the intrigues & the bribes of their Enemies, the treachery of their leaders, and what is most of all to be dreaded, their Priests & their Prejudices. Still their cause is so just, that whilst there is life in it, hope ought not to be abandoned.

I am glad you have put on paper a correction of the Apocryphal tradition, furnished by Pickering, of the Draught of the Declaration of Independence. If he derived it from the misrecollections of Mr. Adams, it is well that the alterations of the original paper proposed by the latter in his own handwriting

attest the fallibility of his Aged Memory. Nothing can be more absurd than the cavil that the Declaration contains known & not new truths. The object was to assert not to discover truths, and to make them the basis of the Revolutionary Act. The merit of the Draught could only consist in a lucid communication of human Rights, a condensed enumeration of the reasons for such an exercise of them, and in a style & tone appropriate to the great occasion, & to the spirit of the American people.

The friends of R. H. Lee have shewn not only injustice in underrating the Draught, but much weakness in overrating the Motion in Cong.ˢ preceding it; all the merit of which belongs to the Convention of Virg.ª which gave a positive instruction to her Deputies to make the Motion. It was made by him as next in the list to P. Randolph then deceased. Had Mr. Lee been absent the task would have devolved on you. As this measure of Virg.ª makes a link in the history of our National birth, it is but right that every circumstance attending it, should be ascertained & preserved. You probably can best tell where the instruction had its origin & by whose pen it was prepared. The impression at the time was, that it was communicated in a letter from you to (Mr. Wythe) a member of the Convention.

TO JAMES MONROE. MAD. MSS.

Oct. 30, 1823.

D.R SIR,—I have just received from Mr. Jefferson your letter to him, with the correspondence between Mr. Canning & Mr. Rush, sent for his & my perusal and our opinions on the subject of it.[1]

From the disclosures of Mr. Canning it appears, as was otherwise to be inferred, that the success of France agst. Spain would be followed by an attempt of the Holy Allies to reduce the Revolutionized Colonies of the latter to their former dependence.

The professions we have made to these neighbours, our sympathies with their liberties & independence, the deep interest we have in the most friendly relations with them, and the consequences threatened by a command of their resources by the Great Powers confederated agst. the rights & reforms, of which we have given so conspicuous & persuasive an example, all unite in calling for our efforts to defeat the meditated crusade. It is particularly

[1] See Monroe's *Writings* (Hamilton), VI., 323, *et seq.* On Nov. 1, Madison wrote to Jefferson:

"With the British power & navy combined with our own we have nothing to fear from the rest of the World; and in the great struggle of the Epoch between liberty and despotism, we owe it to ourselves to sustain the former in this hemisphere at least. I have even suggested an invitation to the B. Govt. to join in applying the 'small effort for so much good' to the French invasion of Spain, & to make Greece an object of some such favorable attention. Why Mr. Canning & his colleagues did not sooner interpose against the calamity wch. could not have escaped foresight cannot be otherwise explained but by the different aspect of the question when it related to liberty in Spain, and to the extension of British Commerce to her former Colonies."—*Mad. MSS.*

fortunate that the policy of G. Britain, tho' guided by calculations different from ours, has presented a co-operation for an object the same with ours. With that co-operation we have nothing to fear from the rest of Europe, and with it the best assurance of success to our laudable views. There ought not, therefore, to be any backwardness, I think, in meeting her in the way she has proposed; keeping in view of course, the spirit & forms of the Constitution in every step taken in the road to war, which must be the last step if those short of war should be without avail.

It cannot be doubted that Mr. Canning's proposal thõ made with the air of *consultation*, as well as concert, was founded on a predetermination to take the course marked out, whatever might be the reception given here to his invitation. But this consideration ought not to divert us from what is just & proper in itself. Our co-operation is due to ourselves & to the world; and whilst it must ensure success, in the event of an appeal to force, it doubles the chance of success without that appeal. It is not improbable that G. Britain would like best to have the merit of being the sole Champion of her new friends, notwithstanding the greater difficulty to be encountered, but for the dilemma in which she would be placed. She must in that case, either leave us as neutrals to extend our commerce & navigation at the expence of hers, or make us enemies, by renewing her paper blockades & other arbitrary proceedings on the Ocean. It may be hoped that

such a dilemma will not be without a permanent tendency to check her proneness to unnecessary wars.

Why the B. Cabinet should have scrupled to arrest the calamity it now apprehends, by applying to the threats of France agst Spain, "the small effort" which it scruples not to employ in behalf of Spanish America, is best known to itself. It is difficult to find any other explanation than that interest in the one case has more weight in its casuistry, than principle had in the other.

Will it not be honorable to our Country, & possibly not altogether in vain to invite the British Gov^{t} to extend the "avowed disapprobation" of the project agst the Spanish Colonies, to the enterprise of France agst Spain herself, and even to join in some declaratory Act in behalf of the Greeks. On the supposition that no form could be given to the Act clearing it of a pledge to follow it up by war, we ought to compare the good to be done with the little injury to be apprehended to the U. S., shielded as their interests would be by the power and the fleets of G. Britain united with their own. These are questions however which may require more information than I possess, and more reflection than I can now give them.

What is the extent of Mr. Canning's disclaimer as to "the remaining possessions of Spain in America?" Does it exclude future views of acquiring Porto Rico &c, as well as Cuba? It leaves G. Britain free as I understand it in relation to other Quarters of the Globe.

I return the correspondence of Mr. Rush & Mr. Canning, with assurances, &c.

TO RICHARD RUSH. MAD. MSS.

MONTP^{R} NOV^{r} 13, 1823

D^{R} SIR I have rec^{d} your favor of Sep^{r} 10, with a Copy of the printed documents on the subject of the slave trade. The mask of humane professions covering an indifference in some & a repugnance in others to its effectual abolition, is as obvious as it is disgusting. G. B. alone, whatever may be her motives, seems to have the object really at heart. It is curious at the same time to observe her experiment for bringing about a change in the law of Nations by denominating the trade Piracy, without the *universal* consent, w^{ch} she held essential to the Code of the armed neutrality dissented from solely by herself. Her Cabinet is chargeable with a like inconsistency, in its readiness to interpose between the Allied Powers & Spanish Am^{a} & its scruples to do so agst the invasion of Spain herself. Nor is it easy to reconcile the advances made to you in behalf of our Southern neighbors, with a disrelish of your proposition that their Independence be immediately acknowledged, a right to do which appears to have been publicly asserted. In point of mere policy, it excites surprize, that if the Brit. Gov^{t} dreads the foreseen extension of the views of the Holy Alliance to Span. Am^{a} in the event of success in the invasion

of Spain, it did not arrest the invasion, as it might have done, by a like interposition with that which is to stifle the projected resubjugation of her former Colonies. It can excite no surprize, indeed, that our co-operation should be courted in measures that may lead to war; it being manifest that in such an issue G. B. would be under the dilemma, of seeing our neutral commerce & navigation aggrandized at the expence of hers, or of adding us to her enemies by renewing her Paper blockades, and other maritime provocations. May it not be hoped that a foresight of this dilemma will be a permanent check to her warlike propensity?

But whatever may be the motives or the management of the B. Gov.t I cannot pause on the question whether we ought to join her in defeating the efforts of the Holy Alliance to restore our Independent neighbors to the condition of Spanish Provinces. Our principles & our sympathies,—the stand we have taken in their behalf, the deep interest we have in friendly relations with them, and even our security ag.st the Great Powers, who having conspired ag.st national rights & reforms must point their most envenomed wrath ag.st the U. S. who have given the most formidable example of them; all concur in enjoining on us a prompt acceptance of the invitation to a communion of counsels, and if necessary of arms in so righteous & glorious a cause.[1] Instead of

[1] April 13, 1824, Madison wrote to Monroe:

"I never had a doubt that your Message proclaiming the just & lofty sentiments of ten millions, soon to become twenty, enjoying in tranquil

holding back, I should be disposed rather to invite, in turn, the B. Govt to apply at least "the small effort" of Mr. Canning to the case of the French Invasion of Spain, and even to extend it to that of the Greeks. The good that wd result to the World from such an invitation if accepted, and the honor to our Country even if declined, outweigh the sacrifices that would be required, or the risks that wd be incurred. With the British fleets & fiscal resources associated with our own we should be safe agst the rest of the World, and at liberty to pursue whatever course might be prescribed by a just estimate of our moral & political obligations.

You ask my view of the claim of the U. S. to the navigation of the St Lawrence thro' the Brit. territory, and my recollection of the grounds on which they claimed that of the Mississippi thro' Spanish territory. On the latter point I may refer to a Report of a Committee of the Revolutionary Congress in 1780[1] in

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freedom the rich fruits of successful revolution, would be recd in the present crisis of Europe with exulting sympathies by all such men as Fayette, and with envenomed alarm by the partisans of despotism. The example of the U. S. is the true antidote to the doctrines & devices of the Holy Allies; and if continued as we trust it will be, must regenerate the old world, if its regeneration be possible."—*Mad. MSS.*

[1] (See Vol. II., p. 326 of the Secret Journals now in print which I presume you have)—*Madison's note.* See for the report *ante* Vol. I., p. 82; for the letter, Vol. II., p. 64. On Feb. 27, 1824, Madison wrote Rush:

"Almost at the moment of receiving yours of Decr 28, my hand casually fell on the inclosed scrap, which I must have extracted from the Author,[2] [borrowed for the purpose] on some occasion when the

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[2] Linquet, "Observations sur l'ouverture de l'Escant."—*Madison's note.*

which among other things the right of the U. S. is argumentatively touched on; and to the extract now inclosed from a letter I wrote to Mr. Jefferson then at Paris in the year 1784, in which there is a glance at the cases having more or less of analogy to that of the Mississippi. It being more easy to obtain by another hand the extract as it stands than to separate the irrelevant matter by my own, I must trust to that apology for obtruding a perusal of the latter. At the dates referred to the navigation of the Mississippi was a cardinal object of national policy; and Virg[a] feeling a particular interest in it, thro' Kentucky then a part of the State, the claim was warmly espoused by her Public Councils of which I was a member at the last date and one of her Delegates to Congress at the first.

As a question turning on Natural right & Public law I think the navigation of the S[t] Lawrence a fair claim for the U. S.

Rivers were given for the use of those inhabiting the Country of which they make a part; and a primary use of the navigable ones is that of external commerce. Again, the public good of Nations is the object of the Law of Nations, as that of invidiuals composing the same nation, is of municipal law. This principle limits the rights of ownership in the one case as well as in the other; and all that can be required in either is that compensation be

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right of navigating the Mississippi engaged my attention I add it to my former inclosures on that subject, merely as pointing to one source of information which may lead to others fuller & better."—*Mad. MSS.*

made for individual sacrifices for the general benefit. This is what is done in the case of roads & the right of way under a municipal jurisdiction, and is admitted to be reasonable, in the form of tolls, where a foreign passage takes place thro' a channel protected & kept in repair by those holding its shores. Vattel allows a right even in Armies marching for the destructive purposes of war, to pass thro' a neutral Country with due precautions. How much stronger the claim for the beneficial privileges of commerce?

In applying these principles it is doubtless proper to compare the general advantage with the particular inconvenience and to require a sufficient preponderance of the former. But was there ever a case in which the preponderance was greater than that of the Mississippi; and the view of it might be strengthened by supposing an occupancy of its mouth limited to a few acres only, and by adding to the former territory of the U. S. the vast acquisition lately made on the waters of that River. The case of the S^{t} Lawrence is not equally striking, but it is only in comparison with the most striking of all cases, that its magnitude is diminished to the eye. The portion of the U. S. connected with the River & the inland seas, through which it communicates with the Ocean, forms a world of itself, and after every deduction suggested by the *artificial* channels which may be substituted for the natural, they will have a sufficient interest in the *natural* to justify their claim and merit their attention. It will be a question with some perhaps whether the use of the River

by citizens of the U. States will not be attended with facilities for smuggling, and a danger of collisions with a friendly power, which render its attainment little desirable. But if any considerable body of Citizens feel a material interest in trading thro' that channel, and there be a public right to it, the Gov^t^ will feel much delicacy in forbearing to contend for it.

How far it may be expedient to appeal from the transitory calculations to the permanent policy of G. B. in relation to Canada, as was done with respect to Spain & Louisiana, you can best judge. I have noticed allusions in Parliament to the considerations recommending an alienation of the Province; and it is very possible that they may be felt by the Gov^t^ But it may well be expected that the solid interest of the Nation will be overruled by the respect for popular prejudices, & by the colonial pasturage for hungry favorites. It is very certain that Canada is not desirable to the U. S. as an enlargement of Domain. It could be useful to them only, as shutting a wide door to smuggling, as cutting off a pernicious influence on our savage neighbours, and as removing a serious danger of collisions with a friendly power.

Having made these observations as due to your request I must not decline saying, that whatever just bearing any of them may have on the point of right, in the case of the S^t^ Lawrence I consider the moment for asserting it not the most propitious, if a harmony of views be attainable with the B.

Gov.t on the great subject of Spanish America, to say nothing of other subjects in principle akin to it. I doubt not however that eno' will be left to your discretion, and that there will be more than eno' of that to so manage the discussion as to prevent an interference of one object with another.

Just as the above was closed, the fall of Cadiz & the Cortes are confirmed to us. What next is the question. Every great event in the present state of the world may be pregnant with a greater. As the Holy Alliance will premise negotiation & terror to force ag.st the new States South of us, it is to be hoped they will not be left in the dark as to the Ultimate views of G. B. in their favor. To conceal these w.d be to betray them as Spain has been betrayed

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TO WILLIAM TAYLOR. CHIC. HIST. SOC. MSS.

MONTP.R NOV. 22 1823

DEAR SIR,—I have rec.d your favor of the 15th inst. which affords me an oppy. of thanking you at the same time for your letter from Mexico, valuable both for the facts stated in it, & for the prophetic remarks which events confirmed.

Mexico must always have been made interesting by its original history, by its physical peculiarities, and by the form & weight of its colonial yoke. The scenes thro' which it has latterly passed, and those of which it is now the Theatre, have given a new

force to the public feeling, and this is still further enlivened by the prospect before it, whether left to itself or doomed as it probably is to encounter the interference of the powerful Gov^ts^ confederated ag^st^ the rights of man and the reforms of nations. With the U. S. Mexico is now connected not only by the ties of neighbourhood & of commercial interests but of political affinities & prudential calculations. We necessarily therefore turn an anxious eye to everything that can effect its career and its destiny.

These observations make it needless to say that the communications you offer, whilst stationed in that country will be rec^d^ with a due sense of your kindness. I feel some scruple nevertheless in saying so of a correspondence which on one side must be passive only. The scruple would be decisive if I did not trust to your keeping in mind that the mere gratification of a private friend is lighter than a feather when weighed ag^st^ your private business or your official attentions.

Your friends in this quarter w^d^ have rec^d^ much pleasure from a visit if you c^d^ have conveniently made it. They are all, I believe, in good health, with the exception of M^rs^ J. Taylor, who has laboured under a tedious complaint which appears to have very nearly finished its fatal task.

I am glad to learn that the President has given you so acceptable a proof of the value he sets on your services. It augurs a continuance of his friendly attention as far as may consist with his estimates

of other public obligations. In whatever circumstances you may be placed I wish you health & success; in which M^rs^ M. joins, as she does in the esteem & regard of which I beg you to be assured.

TO EDWARD EVERETT. MAD. MSS.

MONTPELLIER, Nov^r^ 26th, 1823.

D^R^ SIR,—I rec^d^ several weeks ago your favor of Oc^r^ 30, accompanied by the little Treatise on population analyzing & combating the Theory of Malthus, which Till within a few days I have been deprived of the pleasure of reading.[1] Its reasoning is well entitled to the commendation you bestow on its ingenuity which must at least contribute to a more accurate view of the subject; and on its style, which is characterized by the artless neatness always pleasing to the purest tastes. Be so obliging as to convey my debt of thanks to the Author, and to accept the share of them due to yourself.

Notwithstanding the adverse aspects under which the two Authors present the question discussed, the one probably with an eye altogether to the case of Europe, the other chiefly to that of Am^a^, I should suppose that a thorough understanding of each other ought to narrow not a little the space which divides them.

The American admits the capacity of the prolific

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[1] Alexander Hill Everett's *New Ideas on Population, with Remarks on the Theories and Godwin of Malthus*. London and Boston, 1822. See Madison to Jefferson, *ante*, Vol. II., p. 246.

principle in the human race to exceed the sources of attainable food; as is exemplified by the occasions for colonization. And the European could not deny that as long as an increase of the hands and skill in procuring food should keep pace with the increase of mouths, the evils proceeding from a disproportion could not happen.

It may be presumed also that Mr. Malthus would not deny that political institutions and social habits, as good or bad, would have a degree of influence on the exertion & success of labour in procuring food: Whilst his opponent seems not unaware of the tendency of a scanty or precarious supply of it, to check the prolific principle by discouraging marriages, with a consequent increase of the moral evils of licentious intercourse among the unmarried, & to produce the physical evils of want & disease, with the moral evils engendered by the first.

An essential distinction between the U. S. and the more crowded parts of Europe lies in the greater number of early marriages here than there, proceeding from the greater facility of providing subsistence; this facility excluding a certain portion of the Physical evils of Society, as the marriages do a certain portion of the moral one. But that the rate of increase in the population of the U. S. is influenced at the same time by their political & social condition is proved by the slower increase under the vicious institutions of Spanish America where Nature was not less bountiful. Nor can it be doubted that the actual population of Europe

w^d be augmented by such reforms in the systems as would enlighten & animate the efforts to render the funds of subsistence more productive. We see everywhere in that quarter of the Globe, the people increasing in number as the ancient burdens & abuses have yielded to the progress of light & civilization.

The Theory of Mr. Godwin, if it deserves the name, is answered by the barefaced errors both of fact and of inference which meet the eye on every page.

Mr. Malthus has certainly shewn much ability in his illustrations & applications of the principle he assumes, however much he may have erred in some of his positions. But he has not all the merit of originality which has been allowed him. The principle was adverted to & reasoned upon, long before him, tho' with views & applications not the same with his. The principle is indeed inherent in all the organized beings on the Globe, as well of the animal as the vegetable classes; all & each of which when left to themselves, multiply till checked by the limited fund of their pabulum, or by the mortality generated by an excess of their numbers. A productive power beyond a mere continuance of the existing Stock was in all cases necessary to guard ag^st the extinction which successive casualties would otherwise effect; and the checks to an indefinite multiplication in any case, were equally necessary to guard ag^st too great a disturbance of the general symmetry & economy of nature. This is a speculation however, diverging too much from the object of a letter chiefly intended to offer the acknowledg-

ments & thanks which I beg leave to repeat with assurances of my continued esteem and respect.

TO JAMES BARBOUR. MAD. MSS.

Dec^{r} 5, 1823.

DEAR SIR Your favor of the 2d was duly rec^{d} the evening before the last. I thank you for it and return as desired the Pamphlet of Cunningham, your remarks on which appear very just.

You ask my views of a Resolution to be proposed to the Senate advising a Treaty of Co-operation with G. B. agst an interference of the Allied powers for resubjugating S. America.[1] You will take them for what they are worth, which can be but little with my imperfect knowledge of the facts & circumstances that may be known to yourself.

The Message of the Presid^{t} which arrived by an earlier mail than usual, has I observe distinctly indicated the sentiments of the U. S. with respect to such an interference.[2] But in a case of such

[1] Barbour was then a Senator from Virginia. He said in his letter: "The most important part [of the President's message] will refer, but remotely however, to the probable interference of the Allied Powers in the internal concerns of the Spanish provinces. The information received furnishes too much ground to believe that a design of that sort is seriously meditated. I have a serious thought of proposing a resolution advising the President to co-operate by treaty with Great Britain to prevent it. If it be not asking too much of you I should be very much gratified with your views on this interesting subject." —*Mad. MSS.*

[2] Madison wrote to Monroe, December 6:

"I rec , by yesterday's mail your favor of the 4th, covering a copy of the Message & another copy under a blank cover. It presents a

peculiarity & magnitude, a fuller manifestation of the National will may be expedient, as well to bear out the Executive in measures within his Department, as to make the desirable impressions abroad. The mode you have thought of would certainly be of great avail for the first purpose, and if promulged for the second also; But would not declaratory Resolutions by the two Houses of Congress be of still greater avail for both? They would be felt by the Executive as the highest sanction to his views, would inspire G. B. with the fullest confidence in the policy & determination of the U. S. and would have all the preventive effect on the Allied powers of which they are susceptible from a monitory measure from this quarter.

It can hardly be doubted that G. B. will readily co-operate with this Country, or rather that she wishes our co-operation with her agst. a foreign interference for subverting the Independence of Spanish America. If the attempt can be prevented

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most interesting view of the topics selected for it. The observations on the foreign ones are well moulded for the occasion, which is rendered the more delicate & serious by the equivocal indications from the Brit. Cabinet. The reserve of Canning after his frank & earnest conversations with Mr. Rush is mysterious & ominous. Could he have stepped in advance of his Superiors? or have they deserted their first objects? or have the allies shrunk from theirs? or is any thing taking place in Spain which the adroitness of the Brit Gov^{t} can turn agst the allies, and in favor of S. America? Whatever may be the explanation, Canning ought in Candour, after what had passed with Mr. Rush, not to have withheld it; and his doing so enjoins a circumspect reliance on our own Councils & energies. One thing is certain that the contents of the Message will receive a very close attention every where, and that it can do nothing but good anywhere."—*Mad. MSS.*

by remonstrance she will probably unite with us in a proper one. If she begins with that, she will not hesitate, to proceed, if necessary, to the last resort, with us fighting by her side. If any consideration were to restrain her from that resort even without our co-operation, it would be the dilemma of seeing our *neutral* commerce & navigation flourishing at the expence of hers; or of throwing us into a war agst. her by renewing her maritime provocations.

On the whole I think we ought to move hand in hand with G. B. in the experiment of awing the Confederated Powers into forbearance; and if that fail in following it by means which cannot fail, and that we cannot be too prompt or too decisive in coming to an understanding & concert with her on the subject. This hemisphere must be protected agst. the doctrines & despotisms which degrade the other. No part of it can be as secure as it ought to be, if the whole be not so. And if the whole be sound & safe, the example of its principles will triumph gradually every where.

How much is it to be regretted that the Brit. Gov^{t}. shrunk from even remonstrance agst. the invasion of old Spain and that it has not the magnimity to interpose, late as it is in behalf of the Greeks. No nation ever held in its hand in the same degree the destiny of so great a part of the civilized world, and I cannot but believe that a glorious use would be made of the opportunity, if the head of the Nation was worthy of its heart.

TO THOMAS JEFFERSON. MAD. MSS.

MONTP^{R}, Jan^{y} 14, 1824,

D^{R} SIR I return the letters from Doc^{r}. Cooper inclosed in yours of the 7th. It is truly to be lamented that at his stage of life, and in the midst of his valuable labours, he should experience the persecutions which torment and depress him. Should he finally wish to exchange his present berth for one in our University, and make the proposition without any advances on our part, there could be no indelicacy in our receiving him. What I should dread would be that notwithstanding his pre-eminent qualifications, there might be difficulties to be overcome among ourselves in the first instance; and what is worse that the spirit which persecutes him where he is, would find a co-partner here not less active in poisoning his happiness and impairing the popularity of the Institution. We must await the contingency, and act for the best.

You have probably noticed that the manner in which the Constitution as it stands may operate in the approaching election of President, is multiplying projects for amending it. If electoral districts, and an eventual decision by joint ballot of the two Houses of Congress could be established, it would, I think, be a real improvement; and as the smaller States would approve the one, and the larger the other, a spirit of compromise might adopt both.

An appeal from an abortive ballot in the first meeting of the Electors, to a reassemblage of

them, a part of the several plans, has something plausible, and in comparison with the existing arrangement, might not be inadmissible. But it is not free from material objections. It relinquishes, particularly, the policy of the Constitution in allowing as little time as possible for the Electors to be known & tampered with. And beside the opportunities for intrigue furnished by the interval between the first and second meeting, the danger of having one electoral Body played off against another, by artful misrepresentations rapidly transmitted, a danger not to be avoided, would be at least doubled. It is a fact within my own knowledge, that the equality of votes which threatened such mischief in 1801 was the result of false assurances despatched at the critical moment to the Electors of one State, that the votes of another would be different from what they proved to be.

Having received letters from certain quarters on the subject of the proposed amendments, which I could not decline answering, I have suggested for consideration, "that each Elector should give two votes, one naming his first choice, the other naming his next choice. If there be a majority for the first, he to be elected; if not, and a majority for the next, he to be elected: If there be not a majority for either, then the names having the two highest number of votes on the two lists taken together, to be referred to a joint ballot of the Legislature." It is not probable that this modification will be relished by either of those to whom it has been

suggested; both of them having in hand projects of their own. Nor am I sure that there may not be objections to it which have been overlooked. It was recommended to my reflections by its avoiding the inconvenices of a second meeting of Electors, and at the same time doubling the chance of avoiding a final resort to Congress. I have intimated to my correspondents my disinclination to be brought in any way into the public discussion of the subject; the rather as every thing having a future relation only to a Presidential Election may be misconstrued into some bearing on that now depending.

TO ROBERT S. GARNETT. MAD. MSS.

MONTPELLIER, Feb. 11, 1824.

DEAR SIR. The mail brought me the evening before the last, your favor of the 5th, with the copy of the "New Views, &c," for which I tender my acknowledgments.[1] I must put off the reading of such a work till it may be subject to less interruption than would at this time be unavoidable. From a glance at a few passages in the outset, I do not doubt that more competent lights as to the proceedings of the Convention would have saved the distinguished author from much error into which he may have been led by the faint or refracted rays to which he trusted. The general

[1] *New Views of the Constitution of the United States.* By John Taylor of Caroline, Washington, 1823. Taylor was at this time a Senator from Virginia.

terms or phrases used in the introductory propositions, and now a source of so much constructive ingenuity, were never meant to be inserted in their loose form in the text of the Constitution. Like resolutions preliminary to legal enactments it was understood by all, that they were to be reduced by proper limitations and specifications, into the form in which they were to be final and operative; as was actually done in the progress of the session.

Whether the Constitution in any of its stages or as it now stands, be a National or a federal one, is a question, which ought to be premised by a definition of the terms, and then the answer must be, that it is neither the one nor the other, but possessing attributes of both. It is a system of Government emphatically sui generis for designating which there consequently was no appropriate term or denomination pre-existing.

If there be any thing in these hasty remarks which is rendered inapplicable by parts of the volume into which I have not yet looked, you will be as ready to excuse as sure to detect the misconception.

With friendly respects and good wishes.

TO THOMAS COOPER.[1]

MONTPELLIER, Mar. 23, 1824.

DEAR SIR. I have rec'd the little pamphlet on the Tariff before Congress, which you were so good

[1] From the original kindly contributed by Miss Sally J. Newman, "Hilton," Va.

as to send me.[1] I had previously read its contents in the Newspapers; but they are well worth possessing in the other form you have given them.

I have always concurred in the general principle that industrious pursuits of individuals ought to be left to individuals, as most capable of choosing & managing them. And this policy is certainly most congenial with the spirit of a free people, & particularly due to the intelligent & enterprizing citizens of the U. States.

The true question to be decided therefore is, what are the exceptions to the rule, not incompatible with its generality; and what the reasons justifying them. That there are such cases, seems to be not sufficiently impressed on some of the opponents of the Tariff. Its votaries on the other hand, some of them at least, convert the exceptions into the rule, & would make the Government, a general supervisor of individual concerns. The length to which they push their system, is involving it in complexities & inconsistencies, which can hardly fail to end in great modifications, if not total miscarriage. What can be more incongruous than to tax raw material in an act for encouraging manufactures, or than to represent a temporary protection of them, as ensuring an early competition & reduction of prices; and at the same time to require for their safety, a progressive augmentation

[1] *On the proposed alteration of the tariff submitted to the consideration of the members of South Carolina in the ensuing Congress.* Columbia, 1824.

of the protecting import. I know not a better service, that could be rendered to the science of political economy, than a judicious explanation of the 3 cases constituting exceptions to the principle of free industry which as a general principle, has been so unanswerably established. You have glanced at some of them, among others that may be added. I would admit cases in which there could be scarce a doubt, that a manufacture, once brought into activity, would support itself, & be profitable to the nation. An example is furnished by the Cotton branch among ourselves, which if it had not been stimulated by the effect of the late war, might not for a considerable time have sprung up, and which with that impulse, has already reached a maturity, which not only supplies the home market, but faces its rivals in foreign ones. To guard the example however, against fallacious inferences, it has been well observed, that the manufactories in this case, owe their great success to the advantage they have, in the raw material, and to the extraordinary proportion of the work, which is performed by mechanical agency. Is it not fair also, in estimating the comparative cost of domestic and foreign products, to take into view the effect of wars, even foreign wars, on the latter?

Were there a certainty of perpetual peace, & still more, a universal freedom of commerce, the theory might hold good without exception, that Government should never bias individuals in the choice of their occupation. But such a millenium

has not yet arrived, and experience shows, that if peace furnishes supplies from abroad, cheaper than they can be made at home, the cost in war, may exceed that at which they could be afforded at home, whilst it can not be expected, that a home provision will be undertaken in war, if the return of peace is to break down the undertakers. It would seem reasonable therefore, that the war price should be compared with the peace price, and the war periods with the peace periods, which in the last century have been nearly equal, & that from these data, should be deduced the tax, that could be afforded in peace, in order to avoid the tax imposed by war.

In yielding thus much to the patrons of domestic manufacturers, they ought to be reminded in every doubtful case, the Government should forbear to intermeddle; and that particular caution should be observed, where one part of the community would be favored at the expense of another. In Governments, independent of the people, the danger of oppression is from the will of the former. In Governments, where the will of the people prevails, the danger of injustice arises from the interest, real or supposed, which a majority may have in trespassing on that of the minority. This danger, in small Republics, has been conspicuous.

The extent & peculiar structure of ours, are the safeguards on which we must rely, and altho' they may occasionally somewhat disappoint us, we have a consolation always, in the greater abuses insepa-

rable from Governments less free, and in the hope also, that the progress of political Science, and the lessons of experience will not be lost on the National Council.

With great esteem & cordial respect.

TO JOHN CARTWRIGHT.[1]

MAD. MSS.

1824.

It is so long since I rec^{d} your volume on the English Constitution with the letter accompanying it that I must add to my thanks for the favors, an apology for the delay in returning them. I perceived at once that to do justice to such a Work it ought to be read with a continued attention which happened to be impossible till within a short time past.

I am now able to say that I have found in your pages not a little to admire, very much to approve, but some things in which I cannot concur. Were I to name instances of the last, I should not omit your preference of a single to a double Legislature.

The infirmities most besetting Popular Governments, even in the Representative Form, are found to be defective laws which do mischief before they can be mended, and laws passed under transient impulses, of which time & reflection call for a change. These causes, render the Statute Book complex and

[1] Notice of his death arrived before this was sent.—*Madison's Note.* Under date February 29, 1824, Cartwright sent Madison his book, *England's Constitution, produced and illustrated.—Mad. MSS.*

voluminous, multiply disputed cases between individuals, increase the expence of Legislation, and impair that certainty & stability which are among the greatest beauties, as well as most solid advantages of a well digested Code.

A second Branch of the Legislature, consisting of fewer and riper members, deliberating separately & independently of the other, may be expected to correct many errors and inaccuracies in the proceedings of the other, and to controul whatever of passion or precipitancy may be found in them; and being in like manner with the other, elective & responsible, the probability is strengthened that the Will & interest of their Common Constituents will be duly pursued.

In support of this view of the subject, it may be remarked that there is no instance among us of a change of a double for a single Legislature, whilst there is more than one of a contrary change; and it is believed, that if all the States were now to form their Govts. over again, with lights derived from experience, they would be unanimous in preferring two Legislative Chambers to a single one.

I hope you will have no occasion to regret your early patronage of the Independence of this Country, or your approbation of the principles on which its Govts. have been established. Thus far the Trees can be safely tested by their fruits.

It affords sincere pleasure to find your Govt. & Nation relaxing their prejudices agst. us. Experience has proved what a few on your side as well

as on this foresaw, that the separation of the Colonies tho' a gain to them, would be no loss of *retainable* Commerce to the Parent State, whilst it would be a gain to its Treasury in the diminished demands on it. It remains for the two Countries now, but to cultivate mutual good will, to enrich & improve each other by all the interchanges having these tendencies, and to promote by their examples the improvement & happiness of all other Countries.

I beg you to accept my acknowledg^{ts} for the friendly sentiments you have addressed to me, & to be assured of my great respects & good wishes.

TO HENRY CLAY. MAD. MSS.

MONTPELLIER, Ap^{l}., 1824.

D^{R} SIR,—I have rec^{d} the copy of your speech on "American Industry" for which I pray you to accept my thanks. I find in it a full measure of the Ability & Eloquence so often witnessed on preceding occasions. But whilst doing this justice to the task you have performed, which I do with pleasure as well as sincerity, candor obliges me to add that I cannot concur in the extent to which the pending Bill carries the Tariff, nor in some of the reasonings by which it is advocated.

The Bill, I think loses sight too much of the general principle which leaves to the judgment of individuals the choice of profitable employments for their labor & capital; and the arguments in favor of it, from the aptitudes of our situation for manu-

facturing Establishments, tend to shew that these would take place without a legislative interference. The law would not say to the Cotton planter you overstock the Market, and ought to plant Tobacco; nor to the Planter of Tob°, you would do better by substituting Wheat. It presumes that profit being the object of each, as the profit of each is the wealth of the whole, each will make whatever change the state of the Markets & prices may require. We see, in fact, changes of this sort frequently produced in Agricultural pursuits, by individual sagacity watching over individual interest. And why not trust to the same guidance in favor of manufacturing industry, whenever it promises more profit than any of the Agricultural branches, or more than mercantile pursuits, from which we see Capital readily transferred to manufacturing establishments likely to yield a greater income.

With views of the subject such as this, I am a friend to the *general* principle of "free industry" as the basis of a sound system of political Economy. On the other hand I am not less a friend to the legal patronage of domestic manufactures, as far as they come within particular reasons for exceptions to the general rule, not derogating from its generality. If the friends of the Tariff, some of them at least, maintain opinions subversive of the rule, there are, among its opponents, views taken of the subject which exclude the fair exceptions to it.

For examples of these exceptions I take 1. the case of articles necessary for national defence.

2. articles of a use too indispensable to be subjected to foreign contingencies. 3. Cases where there may be sufficient certainty, that a *temporary* encouragement will introduce a particular manufacture, which once introduced will flourish without that encouragement. That there are such cases is proved by the Cotton manufacture, introduced by the impulse of the war & the patronage of the law, without w^ch^ it might not for a considerable time have effectually sprung up. It must not be forgotten however that the great success in this case was owing to the advantage in the raw material, and to the extraordinary degree in which manual labor is abridged by mechanical agency. 4. A very important exception results from the frequency of wars among the manufacturing nations, the effect of a state of war on the price of their manufactures, and the improbability that domestic substitutes will be provided by establishments which could not outlast occasions of such uncertain duration. I have not noticed any particular reference to this consideration, in the printed discussions; the greater cheapness of imported fabrics being assumed from their cost in time of peace. Yet it is clear that if a yard of imported cloth which costs 6 dollars in peace, costs 8 in war, & the two periods should be as for the last two Centuries taken together, nearly equal, a tax of nearly one dollar a yard in time of peace, could be afforded by the Consumer, in order to avoid the tax imposed by the event of war.

Without looking for other exceptions to the

principle restraining Legislative interference with the industrious pursuits of individuals, those specified give sufficient scope for a moderate tariff that would at once answer the purpose of revenue, and foster domestic manufactures.

With respect to the operation of the projected Tariff, I am led to believe that it will disappoint the calculations both of its friends & of its adversaries. The latter will probably find that the increase of duty on articles which will be but partially manufactured at home, with the annual increment of consumers, will balance at least, the loss of the Treasury from the diminution of tariffed imposts: Whilst the sanguine hopes of the former will be not less frustrated by the increase of smuggling, particularly thro' our East & North frontiers, and by the attraction of the labouring classes to the vacant territory. This is the great obstacle to the spontaneous establishment of Manufactories, and will be overcome with the most difficulty wherever land is cheapest, and the ownership of it most attainable.

The Tariff, I apprehend, will disappoint those also, who expect it to put an end to an unfavorable balance of trade. Our imports, as is justly observed, will not be short of our exports. They will probably exceed them. We are accustomed to buy not only as much as we can pay for, but as much more as can be obtained on credit. Until we change our habits therefore, or manufacture the articles of luxury, as well as the useful articles; we shall be

apt to be in arrears, in our foreign dealing, and have the exchange bearing agst us. As long as our exports consist chiefly of food & raw materials, we shall have the advantage in a contest of privations with a nation supplying us with superfluities. But in the ordinary freedom of intercourse the advantage will be on the other side; the wants on that being limited by the nature of them, and ours as boundless as fancy and fashion.

Excuse a letter which I fear is much too long, and be assured of my great esteem & sincere regard.

TO EDWARD LIVINGSTON. MAD. MSS.

MONTPELLIER April 17, 1824.

DEAR SIR I have been retarded in thanking you for the copy of your speech on the subject of internal improvement, by a necessary absence from home, and by successive occurrences since my return. I now beg you to accept that debt to your kindness.[1]

I have read your observations with a due perception of the ability which pervades and the eloquence which adorns them; and I must add, not without the pleasure of noticing that you have pruned from the doctrine of some of your fellow labourers, its most luxuriant branches. I cannot

[1] The relations between Madison and Livingston which had not been cordial for some years were now amicable. Madison wrote Monroe April 13, 1824: "Mr. Livingston may be assured that I never considered our personal relations to be other than friendly and that I am more disposed to cherish them by future manifestations than to impair them by recollections of any sort."—*Mad. MSS.*

but think at the same time, that you have left the root in too much vigour. This appears particularly in the question of Canals. My impression with respect to the authority to make them may be the stronger perhaps, (as I had occasion to remark as to the Bank on its original discussion,) from my recollection that the authority had been repeatedly proposed in the Convention, and negatived, either as improper to be vested in Congress, or as a power not likely to be yielded by the States. My impression is also very decided, that if the construction which brings Canals within the scope of commercial regulations, had been advanced or admitted by the advocates of the Constitution in the State Conventions, it would have been impossible to overcome the opposition to it. It is remarkable that Mr. Hamilton himself, the strenuous patron of an expansive meaning in the text of the Constitution fresh in his memory, and in a Report contending for the most liberal rules of interpretation, was obliged by his candour, to admit that they could not embrace the case of Canals.

In forbearing to exercise doubtful powers, especially when not immediately and manifestly necessary, I entirely agree with you. I view our political system also, as you do, as a combination and modification of powers without a model; as emphatically sui generis, of which one remarkable feature is, its *annihilation* of a power inherent in some branch of all other governments, that of taxing exports. I wish moreover that you might

be followed in the example of defining the terms used in argument, the only effectual precaution against fruitless and endless discussion. This logical precept is peculiarly essential in debating Constitutional questions, to which for want of more appropriate words, such are often applied as lead to error and confusion. Known words express known ideas; and new ideas, such as are presented by our novel and unique political system, must be expressed either by new words, or by old words with new definitions. Without attention to this circumstance, volumes may be written which can only be answered by a call for definitions; and which answer themselves as soon as the call is complied with.

It cannot be denied without forgetting what belongs to human nature, that in consulting the contemporary writings, which vindicated and recommended the Constitution, it is fair to keep in mind that the authors might be sometimes influenced by the zeal of advocates: But in expounding it now, is the danger of bias less from the influence of local interests, of popular currents, and even from an estimate of national utility.

Having rambled thus far I venture on another devious step, by alluding to your inference from a passage in one of my messages, that in a subsequent one, my objection was not to the power, but to the details of the Bill in which it was exercised. If the language was not more carefully guarded against such an inference it must have been because I relied on a presumed notoriety of my opinion on the

subject; and probably considered the terms, "existing powers," as essentially satisfied by the uncontested authority of Congress over the Territories.

TO HENRY LEE. MAD. MSS.

MONTPELLIER, June 25, 1824.

I have received, Sir, your letter of the 18th, inclosing the proposal of a new publication, under the title of "American Gazette & Literary Journal." Of the prospectus I cannot say less than that it is an interesting specimen of cultivated talents.

I must say at the same time that I think it concedes too much to a remedial power in the press over the spirit of party.

Besides the occasional and transient subjects on which parties are formed, they seem to have a permanent foundation in the variance of political opinions in free States, and of occupations and interests in all civilized States. The Constitution itself, whether written or prescriptive, influenced as its exposition and administration will be, by those causes, must be an unfailing source of party distinctions. And the very peculiarity which gives pre-eminent value to that of the United States, the partition of power between different governments, opens a new door for controversies and parties. There is nevertheless sufficient scope for combating the spirit of party, as far as it may not be necessary to fan the flame of liberty, in efforts to divert it

from the more noxious channels; to moderate its violence, especially in the ascendant party; to elucidate the policy which harmonizes jealous interests; and particularly to give to the Constitution that just construction, which, with the aid of time and habit, may put an end to the more dangerous schisms otherwise growing out of it.

With a view to this last object, I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that be not the guide in expounding it, there can be no security for a consistent and stable, more than for a faithful exercise of its powers. If the meaning of the text be sought in the changeable meaning of the words composing it, it is evident that the shape and attributes of the Government must partake of the changes to which the words and phrases of all living languages are constantly subject. What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense. And that the language of our Constitution is already undergoing interpretations unknown to its founders, will I believe appear to all unbiased Enquirers into the history of its origin and adoption. Not to look farther for an example, take the word "consolidate" in the Address of the Convention prefixed to the Constitution. It there and then meant to give strength and solidity to the Union of the States. In its current & controversial application it means a

destruction of the States, by transfusing their powers into the government of the Union.

On the other point touched in your letter, I fear I shall not very soon be able to say anything. Notwithstanding the importance of such a work as that of Judge Johnson, and the public standing of the author, I have never given it a reading. I have put it off, as in several other voluminous cases, till I could go through the task with a less broken attention. While I find that the span of life is contracting much faster than the demands on it can be discharged, I do not however abandon the proposed perusal of both the "Life of Greene," and "the Campaign of 1781."

TO HENRY WHEATON. CHIC. HIST. SOC. MSS.

MONTP^{R} July 11, 1824.

D^{R} SIR I have rec^{d} your letter of the 3 inst: referring to a penciled note of mine on a letter from M^{r} Pinkney.

It is a fact as there noted, that when the Embargo was recommended to Cong^{s} Dec^{r} 18, 1807, a copy of the British orders in Council of Nov^{r} 11, 1807, as printed in an English newspaper, stating them to be ready in that form to be signed and issued, lay on the President's table. From what quarter the Newspaper came, or whether known, I do not recollect. But the measure it threatened could not be doubted, and manifestly required, if there had been

no other grounds for apprehending the danger, that American property & seamen should not be exposed to it. Besides the precise warning contained in the Newspaper, it was generally understood that some such outrage was contemplated by the British Cabinet. I do not pretend to recollect the several grounds for the belief. The files of the Department of State may contain some of them. In a private letter of Oc^{r} 5, 1807 from an intelligent & close observer in London of the indicated views of the Cabinet towards the U. S. I find the following passage "The Gazette of Saturday has gone by without announcing the injurious Blockade of all French ports & all ports under the influence of France, which was threatened all the week and very generally expected. Another letter from the same of Oc^{r} 11, adds "Two more Gazettes have been published without announcing the rigorous blockade, one of them as late as last night. I hope they have thought better of it."

Altho' it is true therefore that no official evidence existed of the Orders in Council when the Embargo was recommended, there was a moral certainty in the evidence described by M^{r} Pinkney (vol. 6, p. 190 of State papers) which included "the Newspapers of this Country (G. B.) rec^{d} in the U. S. some days before the Message of the President."

To this view of the case the language of the Message was accommodated. And the subsequent message of Feb^{y} 2, 1808, founded on the official rec^{s} of the Orders in Council squares with the idea that

they had been unofficially known when the provident measure of the Embargo was recommended. If the files of Cong of that period are in preservation, the papers communicated with the Message may throw light on the subject. I cannot, I think, be mistaken in saying that the information in the English Newspaper was republished in the National Intelligencer; and if so that alone must settle the question.

I am glad to find you turning a critical attention to this subject. No part of the public proceedings during the two last administrations is less understood, or more in danger of historical misinterpretations, than the Embargo and the other restrictions of our external commerce. It has become the fashion to decry the whole as inefficacious and unworthy substitutes for war. That immediate war under existing circumstances was inexpedient & that experimental measures short of war were preferable to naked submission can not well be doubted. It is equally clear That the Embargo as a precaution agst the surprise and devastation of our trade, was proper, even if war had been intended, and the presumption is strengthened by late experience that if faithfully executed it would have produced a crisis in the Brit: W. Indies that might have extorted justice without a resort to war. If it failed, it was because the Gov^{t} did not sufficiently distrust those in a certain quarter whose successful violations of the law led to the general discontent witch called for its repeal. Could the bold and combined perfidies have been

anticipated, an expence which would have proved economical, might have prevented or quickly subdued them. The patriotic fishermen of Marblehead at one time offered their services; and if they c^d^ at an early day have been employed in armed vessels, with a right to their prizes, and an authority to carry them into ports where the Tribunals would have enforced the law, the smuggling would have been crushed.

With respect to the restrictive laws generally, it is a known fact that under all the disadvantages which they encountered their pressure on the manufactures of G. Britain as reported to the Parl^t^ and painted by Mr. Brougham ultimately brought about a revocation of the predatory orders. It is remarkable that this revocation bearing date June 23d followed at no very long interval the letter of Castlereagh to Foster communicated in extenso to the American Gov^t^ in which it was haughtily declared that the Orders in Council would not be repealed; and consistently with other engagements could not be repealed; a declaration which leaving no alternative to the U. S. but submission or war, was met of course by the latter. Had the repeal of the orders taken place a few weeks sooner, it is to be presumed that the declaration of war which preceded the repeal would at least have been suspended by that event, with an experiment under its auspices of further negotiations for a discontinuation of impressments, the other great obstacle to pacific relations; and that the success of the restrictive laws in obtaining

the repeal without a resort to war, would have been followed by songs of praise, instead of the criticisms to which an oblivion of their efficacy has given rise.

July 21, 1824

P. S. After writing the above it occurred that it might be well to consult the recollections & memoranda of M^r^ Jefferson. His answer just rec^d^ says "there is no fact in the course of my life which I recollect more strongly than that of my being at the date of the message in possession of an English Newspaper containing a copy of the proclamation [Orders] &c. which I think came to me thro' a private channel." The answer extracts from his notes on the occasion circumstances in full accordance with his memory, and he does not doubt that the general fact is remembered by all the then members of the Cabinet and probably attested by the papers communicated to Congress with the Message. Mr. J. thinks also as I do myself that the turn of the arg^ts^ of the opposition party will be found not to deny the fact, but the propriety of acting on Newspaper authority.

TO JAMES MONROE. MAD. MSS.

MONTP^R^, August 5, 1824.

D^R^ SIR I have just had the pleasure of receiving yours of the 2^d^ We had looked for the greater pleasure of giving a welcome about this time to you

& Mrs. M. being informed from Albemarle that you were to be there in a few days. We are very sorry for the uncertainty you intimate, but still hope that Mrs. M's health will not only permit you to make the journey, but her to join you in it. It cou^d not fail to be beneficial to both, and you owe it to yourself as well as to your friends to take some repose with them after the vexations which have beset you. Come I pray you & be not in your usual hurry.

The Convention with Russia is a propitious event as substituting amicable adjustment for the risks of hostile collision.[1] But I give the Emperor however little credit for his assent to the principle of "Mare liberator" in the North Pacific. His pretensions were so absurd, & so disgusting to the Maritime world that he c^d not do better than retreat from them thro' the forms of negotiation. It is well that the cautious, if not courteous policy of Eng^d towards Russia has had the effect of making us, in the public eye, the leading Power in arresting her expansive ambition. It is as you note an important circumstance in the case, that the principles & views unfolded in your Message were not unknown at St. Petersburg at the date of the Convention. It favors the hope that bold as the allies with Russia at their head, have shewn themselves in their enmity to free Gov^t everywhere, the maritime

[1] The convention relative to navigation, fishing, and trading in the Pacific and to establishments on the northwest coast between the United States and Russia was concluded April 17, 1824, at St. Petersburg.—*Treaties and Conventions*, (Ed. 1889), p. 931.

capacities of the U. S. with the naval & pecuniary resources of G. B. have a benumbing influence on all their wicked enterprises.

The advances of France towards a compromise with Colombia, if sincere, is a further indication of the dread of the united strength & councils of this Country & G. Britain. The determination of the latter not to permit foreign interference in the contest between Spain & South America, if confided in with the language of your message on the subject, ought I think to quiet the apprehensions of Colombia; and to parry the question of Mr. Salazar, at least till the meeting of Cong.s, knowing as he must do the incompetency of the Executive to give a precise answer.

Repeating my exhortations in all which Mrs. M. joins me, we offer Mrs. M. & yourself our affectionate respects & best wishes.

TO PETER S. DUPONCEAU.

CHIC. HIST. SOC. MSS.

MONTPELLIER Aug 1824.

D.r SIR I rec.d the copy of your discourse on the Jurisdiction of the courts of the U. S. with which you favoured me, at a time when I could not conveniently read it; and I have since been obliged to do it with such interruptions that I am not sure of having done entire justice to your investigations.[1]

[1] *A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States.* Philadelphia, 1824.

I have certainly found in the volume ample evidence of the distinguished ability of which the public had been made sensible by other fruits of your pen.

I must say at the same time that I have not been made a convert to the doctrine that the "Common Law" as such is a part of the law of the U. S. in their federo-national capacity. I can perceive no legitimate avenue for its admission beyond the portions fairly embraced by the Common law terms used in the Constitution, and by acts[1] of Congress authorized by the Constitution as necessary & proper for executing the powers which it vests in the Government.

A characteristic peculiarity of the Gov^t^ of the U. States is, that its powers consist of special grants taken from the general mass of power, whereas other Gov^ts^ possess the general mass with special exceptions only. Such being the plan of the Constitution, it cannot well be supposed that the Body which framed it with so much deliberation, and with so manifest a purpose of specifying its objects, and defining its boundaries, would, if intending that the Common Law sh^d^ be a part of the national code, have omitted to express or distinctly indicate the intention; when so many far inferior provisions are so carefully inserted, and such appears to have been the public view taken of the Instrument, whether we recur to the period of

[1] By these the common Law or any other laws may be sanctioned or introduced within the territories or other places subject to the conclusive power of Legislation vested in Congress.—*Madison's Note.*

its ratification by the States, or to the federal practice under it.

That the Constitution is predicated on the existence of the Common Law cannot be questioned; because it borrows therefrom terms which must be explained by Com: Law authorities: but this no more implies a general adoption or recognition of it, than the use of terms embracing articles of the Civil Law would carry such an implication.

Nor can the Common Law be let in through the authority of the Courts. That the whole of it is within their jurisdiction, is never alledged, and a separation of the parts *suited* from those *not suited* to the peculiar structure & circumstances of the U. States involves questions of *expediency* & *discretion*, of a Legislative not Judicial character. On questions of criminal law & jurisdiction the strict rule of construction prescribed by the Com: Law itself would seem to bar at once an assumption of such a power by the Courts.

If the Common Law has been called our birthright, it has been done with little regard to any precise meaning. It could have been no more our birthright than the Statute law of England, or than the English Constitution itself. If the one was brought by our ancestors with them, so must the others; and the whole consequently as it stood during the Dynasty of the Stuarts, the period of their emigration, with no other exceptions than such as necessarily resulted from inapplicability to the colonial state of things. As men our birthright was

from a much higher source than the common or any other human law and of much greater extent than is imparted or admitted by the common law. And as far as it might belong to us as British subjects it must with its correlative obligations have expired when we ceased to be such. It would seem more correct therefore & preferable in every respect that the common law, even during the Colonial State, was in force not by virtue of its adhesion to the emigrants & their descendants in their individual capacity but by virtue of its adoption in their social & political capacity.

How far this adoption may have taken place through the mere agency of the courts cannot perhaps be readily traced. But such a mode of introducing laws not otherwise in force ought rather to be classed among the irregularities incident to the times & the occasion, than referred to any in G. Britain, where the courts though sometimes making legal innovations per saltus profess that these should grow out of a series of adjudications, gradually accommodating the law to the gradual change of circumstances in the ordinary progress of society. On sound principles, no change whatever in the state of the Law can be made but by the Legislative authority; Judicial decisions being not more competent to it than Executive proclamations.

But whatever may have been the mode or the process by which the Common law found its way into the colonial codes, no regular passage appears to have been opened for it into that of the [U.] S.

other than through the two channels above mentioned; whilst every plea for an irregular one is taken away, by the provident article in the constitution for correcting its errors & supplying its defects. And although a frequent resort to this remedy be very undesirable, it may be a happy relief from the alternative of enduring an evil or getting rid of it by an open or surreptitious usurpation.

I must not forget however that it is not my intention to enter into a critical, much less a controversial examination of the subject; and I turn with pleasure from points on which we may differ, to an important one on which I entirely agree with you. It has always appeared to me impossible to digest the unwritten law or even the penal part of it, into a text that would be a compleat substitute. A Justinian or Napoleon Code may ascertain, may elucidate, and even improve the existing law, but the meaning of its complex technical terms, in their application to particular cases, must be sought in like sources as before; and the smaller the compass of the text the more general must be its terms & the more necessary the resort to the usual guides in its particular applications.

With assurances of my high esteem I pray you Sir, to accept my unfeigned good wishes

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TO THOMAS JEFFERSON. MAD. MSS.

MONTPELLIER, Sept^{r} 10, 1824

DEAR SIR On the rec^{t} of yours of Aug. 8, I

turned my thoughts to its request on the subject of a Theological Catalogue for the Library of the University; and not being aware that so early an answer was wished, as I now find was the case, I had proceeded very leisurely in noting such Authors as seemed proper for the collection. Supposing also, that altho' Theology was not to be taught in the University, its Library ought to contain pretty full information for such as might voluntarily seek it in that branch of Learning, I had contemplated as much of a comprehensive & systematic selection as my scanty materials admitted; and had gone thro' the five first Centuries of Xnity when yours of the 3d instant came to hand which was the evening before the last. This conveyed to me more distinctly the limited object your letter had in view, and relieved me from a task which I found extremely tedious; especially considering the intermixture of the doctrinal & controversial part of Divinity with the moral & metaphysical part, and the immense extent of the whole. I send you the list I had made out, with an addition on the same paper, of such Books as a hasty glance of a few catalogues & my recollection suggested.[1] Perhaps some of them

[1] The list enclosed was as follows:

Centy. I. – – – Clemens Epistle. to the Corinthians – published at Cambridge 1788.

Ignatius Epists – – – – – – – – – – – – – Amsterdam 1607.

Cotelier – Recuiel de Monumens des pères dans les tems apostoliques edit par le Cleve Amsterdam 1774, 2 v. fol.

Flavius Josephus [in English by Whiston] Amsterdam 1726, 2v. fol.

may not have occurred to you and may suit the blank you have not filled. I am sorry I could not make a fair copy without failing to comply with the time pointed out.

I find by a letter from Fayette, in answer to a

Philo Judaeus [Greek & Latin] English Edn. 1742, 2 v. fol.
Lucian's Works – – – Amsterdam 1743, 3 v. 4°.
Fabricius Biblio Græc:
– – – – Delectus &c. See Moshm. v. 1, p. 106

Cent: II Justin Martyrs apolos, &c. [Edited by Prudent Maraud Benedictine] 1742, 1 v. fol.
Hermias – – Oxford 1700 – 8°.
Athenagoras – – Oxford 1706 – 8°.
Clemens Alexandrinus [Ed. by Potter] Oxford 1715 2 vol. fol.
Tertullian – – – – – – – – – – – – – – Venice 1746, 1 v. fol.,
Theophilus of Antioch [first adopted the term Trinity] – 1742 1 v. fol.
Irenaeus [Ed. by Grabe] 1702, 1 v. fol.
Tatian – agst. the Gentiles – Oxford, 1700, 8°.
Ammonius Saccas's Harmony of the Evangelists–
Celsus [translated par Bouhereau] Amsterdam 1700 4°.

Cent. III. Minutius Felix [translated by Reeves] Leiden 1672, 8°.
Origen – – – 4 vol. fol. Greek & Latin.
Cyprian – – [translated into French by Lombert] 1 v. fol.
Gregory Thaumaturgus–Grec. & Lat. 1626, 1 v. fol.
Arnobius Africanus. Amsterdam 1651, 1 v. 4°.
Anatolius – – – – – Antwerp, 1634, 1 v. fol.
Methodius Eubulius – Rome 1656, 8°.
Philostratus' life of Apollonius Tyanaeus [Grec & Lat. with notes by Godefroy Olearius, Leipsic, 1709, 1 v. fol: Frenched by De Vigenere, Englished in part by Chs. Blount.]

Cent: IV. Lactantius.—Edit by Lenglet Paris 1748, 2 v. 4°.
Eusebius of Cæsarea – –
Athanasius, par Montfauçon 1698, 3 v. fol.
Antonius' [founder of the Monastic order] seven letters &c. Latin.
St. Cyril (of Jerusalem) Gr. & Lat. Paris 1720, 1 v. fol.
S . Hilary. Ed. by Massci Verona 1730.

few lines I wrote him on his arrival at N. Y., that he means to see us before the 19th of Oct^{r}, as you have probably learned from himself. His visit to the United States will make an annus mirabilis in the history of Liberty.

Cent: IV. Lucifer, Bishop of Cagliari. Paris 1586 1 v. 8°.
Epiphanius. Gr. & Lat. Edit Pere Petau, 1622, 2 v. fol.
Optatus. Ed. by Dupin. 1700. fol.
Pacianus. Paris, 1538. 4°.
Basil (B. of Cæsarea) Gr. & Lat. 1721. 3 v. fol.
Gregory (of Nazianzi) G. & L. Paris 1609–11 2 v. fol.
– – – – (of Nyssa) 1615 2 v. fol.
Ambrosius—Paris 1690 2 v. fol.
Jerome. – – – Paris 1693–1706. 5 v. fol.
Ruffinus – – Paris 1580 – – – 1 v. fol.
Augustin – – – – – 1679–1700 8 v. fol.
Chrysostom John Gr. & L.—— 10 v. fol.
Ammianus Marcellinus
Julian's works

Cent: V. Sulpicius Severus. Verona 1754, 2 v. 4°.
Isidorus (of Pelusium) Paris 1638. Gr. & L. 1 v. fol.
Cyril (of Alex^{a}.) Gr. & L. 6 v. fol.
Orosius – – Leyden. 1738. 4°.
Theodoret. Edit by Pere Simond. G. & L. 1642. 4 v. fol. in 1684. vol. V. by Garnier.
Philostorgius, by Godefroi. G. & L. 1642, 1 v. 4°.
Vincentius Lyrinensis. Rome. 4°.
Socrates' Eccles. History
Sozomen. d°. d°.
Leo (the great) by Quesnel Lyons. 1700. fol.
Æneas (of Gaza) Gr. with Latin vèrsion, by Barthius &c. 1655. 4°.

Miscellaneous Thomas Aquinas [Do^{r}. Angelicus] Head of the Thomists. 12 v. fol.
The Koran, Duns Scotus [Doctor Subtilis] Head of the Scotists, 12 v. fol.
Caves Lives of the Fathers. Dailles Use & abuse of them.
Erasmus, Luther, Calvin, Socinus, Bellarmin, Chillingworth.

TO A. B. WOODWARD. MAD. MSS.

MONTPELLIER, Sep[r] 11, 1824.

D[R] SIR, I have rec[d] & return my thanks for the printed communications accompanying your note of the 4th inst.

Council of Trent by F. Paul; by Palavicini; by Basnaze.
Grotius on the truth of Xn Religion. Sherlock's [Bishop] Sermons.
Tillotsons &c. Tillemont, Baronius, Lardner,[1] Hookers Ecclesiastical Polity. Pierson on the Creed. Bossuet on 39 Articles. Pascal's lettres Provenciales. do Penseès. Fenelon Bossuet
Bourdelon Sauvin Fletcher Manillon. Warburton's Divine Legation. Hannah Adams—View of all Religions
Stackhouses – – Hist. of the Bible
S[r]. Isaac Newtons works on Religious subjects.
Locke's do. Stillingfleets controversy with him on the possibility of endowing matter with thought.
Clarke on the Being & Attributes of God
– – – Sermons.
Butler's Analogy. Eight Sermons at Boyles. Lectures by Bentley
Whitby on the 5 points.
Whiston's Theological Works.
Taylor (Jeremiah) Sermons.
John Taylor [of Norwich] ag[st] original Sin Edward's in answer. Edward's on free will – – – – on virtue.
Soame Jenyn's Enquiry into the nature & origin of evil
Liturgy for King's Chapel Boston.
Matheis Essays to do good. Price on Morals.
Wallaston's Religion of Nature delineated
Barclay's apology for Quakers. W[m] Penn's works
King's Enquiry into the Constitution discipline & worship of the Church, within 3 first cent.
King [W[m]] Essay on Origin of Evil; notes by Law. Wesley on Original Sin.
Priestley's & Horesley's controversies

– [1] With life by Kippis 1788.—*Madison's Note.*

To appreciate your proposed expedient for a standard of measures & weights would require more time than I can apply, & more mathematical Science than I retain. Justice will doubtless be done to it by competent Judges.

I have given a hasty perusal to the observations "addressed to the Individual Citizen." Altho' I cannot concur in some of them, I may say of all that they merit every praise for the perspicuity, the precision, & the force, with which they are presented to the public attention.

You have fallen into a mistake in ascribing the Constitution of Virg[a] to Mr. Jefferson, as will be inferred from the animadversions on it in his "Notes on Virginia." Its origin was with George Mason, who laid before the Committee appointed to prepare

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Historical view of the Controversy on the intermediate state of the Soul by Dean Blackburne.
The Confessional by same.
Jone's method of settling the canonical Scripture of N. Test[t].
Leibnitz on Goodness of God, liberty of man & origin of evil.
Paley's Works. Warburton's principles of Nat. & Rev[d]. Religion
Blairs Sermons. Buckmeisters (of Boston) do.
Necker's importance of Religion.
Latrobe's (Benjamin) Doctrine of the Moravians
Ray's wisdom of God in the Creation
Durham's Astrotheology.
Bibliotheca fratrum Polonorum 9 vol. fol.

The Catalogue of Eastburn & Co. New York, particularly the Theological part at the end, deserves attention. Some rare books are found in it, and might probably be bought at cheap prices.—*Mad. MSS.*

a plan a very broad outline,[1] which was printed by the Com^e^ for consideration, & after being varied on some points & filled up, was reported to the Convention where a few further alterations, gave it the form in which it now stands. The Declaration of rights was subsequently from the same hand. The Preamble to the Constitution was probably derived in great measure if not wholly from the funds of Mr. Jefferson, the richness of which in such materials is seen in the Declaration of Independence as well as elsewhere. The plan of Mr. Jefferson annexed to one of the Editions of his "Notes on Virg^a^" was drawn up after the Revol^y^ war, with a view to correct the faults of the existing Constitution, as well as to obtain the authentic sanction of the people.

Your love of truth will excuse this little tribute to it, or rather would not excuse its omission.

With esteem & good wishes

TO MRS. MADISON.[2]

MONTICELLO Friday morning 7. ocl [November, 1824].

We arrived about sunset, just as they were com-

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[1] July, 1826. For a more recollected view of this matter, see an account of the origin & progress of the "Constitution of Virginia," by J. M. & among his papers.—*Madison's Note.* See *ante*, Vol. I., p. 32.

[2] From the family papers of the late J. Henley Smith, Esq., of Washington, D. C. When Lafayette arrived Madison wrote to him, August 21, 1824:

"I this instant learn, my dear friend, that you have safely reached the shores, where you will be hailed by every voice of a free people.

mencing their Desert the Genl had arrived about 3 o'clock with his son & Secrety the last so sick that he went to bed instead of dinner I have not heard how he is this evening, I found here only the General & his family, Col Campbell & Mr. Roane of the *Council* who will attend him till he goes out of the State & a few of the family. A large crowd had been here, including the individuals appointed to receive the Genrl from Fluvanna & the party escorting him but they did not remain not even Genl Coche to dinner. The Genl does not say yet how many days he stays here. He declines a visit to Staunton & will divide the time not required for the road & the appointed festivities between Mr. Jefferson & myself. It is probable he will not be with us till near or quite the middle of next week He will have with him besides his son & Secrety, the two Councillors & such of the company of Orange meeting, & conducting him as may choose to stop at Montpellier. The Miss Wrights are expected here tomorrow, of Mrs Douglas & her daughters the family here have no notice. The Genl thinks they may make a call as a morning visit only They travel it seems with the Miss Wrights but whether they will precede them in the visit to us is unknown; nor can I learn whether the Miss

That of no one, as you will believe, springs more from the heart than mine. May I not hope that the course of your movements will give me an opportunity of proving it, by the warmth of my embrace on my own threshold. Make me happy by a line to that effect when you can snatch a moment for a single one from the eager gratulations pouring in upon you."—*Mad. MSS.*

Wrights will precede, accompany, or follow Genl I may learn more today but not in time to write you. The Genl on finding I had a letter for them proposed to take charge of it & it was given him of course. My old friend embrased me with great warmth, he is in fine health & spirits but so much increased in bulk & changed in aspect that I should not have known him. They are doing their *possible* at the university to do him honor. We shall set out thither about 9 o'c I cannot decide till the evening when I shall return, I am not without hope it may be tomorrow.

With devoted affection

TO FREDERICK BEASLEY. MAD. MSS.

MONTPELLIER, VIRGINIA, Dec. 22, 1824

REV^D^ SIR, I have just received your letter of the 13th, on its return from Charlottesville, and wish I could gratify you with all the information it asks. In place of it, I can only observe that the System of Polity for the University of Virginia being not yet finally digested & adopted I cannot venture to say what it will be in its precise form and details. It is probable that instead of a President or Provost, as chief magistrate, the superintending & Executive duties, so far as not left to the individual Professors over their respective Classes, will be exercised by the Faculty; the Professors presiding in rotation. This regulation however, as experimental, will be at all times alterable by the Board of Visitors. The

Code of discipline will be prepared with the aid of all the lights that can be obtained from the most distinguished Seminaries; and some of the innovations will, not improbably, be in the spirit of your judicious observations. As the University, being such in the full extent of the term, will not contain boys under sixteen years of age, and be chiefly filled by youths approaching to manhood, with not a few perhaps arrived at it there is the better chance for self-government in the students, and for the co-operation of many in giving efficacy to a liberal and limited administration.

The peculiarity in the Institution which excited first, most attention & some animadversion, is the omission of a Theological Professorship. The Public Opinion seems now to have sufficiently yielded to its incompatibility with a *State* Institution, which necessarily excludes sectarian Preferences. The best provision which occurred, was that of authorizing the Visitors to open the Public rooms for Religious uses, under *impartial* regulations, (a task that may occasionally involve some difficulties) and admitting the establishment of Theological Seminaries by the respective sects contiguous to the precincts of the University, and within the reach of a familiar intercourse distinct from the obligatory pursuits of the Students. The growing Village of Charlottesville also is not distant more than a mile, and contains already Congregations & Clergymen of the sects to which the students will mostly belong.

You have already noticed in the public Prints the

Scientific Scope of the University, and the resort to Europe for some of the Professors. The reasons for the latter step, you may have also seen in Print; as well as the reduction of the number of chairs in the first instance, by annexing Plural functions to some of them. This was rendered necessary by the limited resources, as yet granted by the Legislature, and will be varied as fast as an augmentation of these will permit, by dividing & subdividing the branches of Science now in the same group. Several of the Professors remain to be appointed; among them one for Mental Philosophy including the branches to which you refer. This has always been regarded by us as claiming an important place in so comprehensive a School of Science. The gentleman in prospect for the station is not yet actually engaged.

You seem to have allotted me a greater share in this undertaking than belongs to me. I am but one of seven Managers, and one of many pecuniary benefactors. Mr. Jefferson has been the great projector & the mainspring of it.

I am sorry that I have never been able to give the volume you kindly favored me with, the reading it doubtless deserves; and I fear that however congenial the task would be with studies relished at former periods, I shall find it difficult to reconcile it with demands on my time, the decrease of which does not keep pace with the contraction of its remaining span. From several dips into the Treatise I think myself authorized to infer that it embraces a scrutinizing & systematic view of the subject,

interesting to the best informed, and particularly valuable to those who wish to be informed.

I thank you Sir for the friendly sentiments you have expressed, and beg to accept with my great respect a cordial return of them.

TO THOMAS JEFFERSON. MAD. MSS.

MONTPELLIER, Dec^{r} 31, 1824.

DEAR SIR I have received yours without date inclosing the letter of Mr. Cabell & your answer. I approve entirely the course you recommend to the friends of the University at Richmond, on the proposed removal of the College at Williamsburg. It would be fortunate if the occasion could be improved for the purpose of filling up the general Plan of Education, by the introduction of the grade of Seminaries between the Primary Schools and the University. I have little hope however that the College will accede to any arrangement which is to take from it a part of its funds, and subject it to the Legislative Authority. And in resisting this latter innovation, it will probably be supported by all the Sectarian Seminaries, tho' to be adopted as legal establishments of the intermediate grade. It is questionable also whether the sectarian Seminaries would not take side with William & Mary in combating the right of the Public to interfere in any manner with the property it holds. The perpetual inviolability of Charters, and of donations both Public & private, for pious & charitable uses,

seems to have been too deeply imprinted on the Public mind to be readily given up. But the time surely cannot be distant when it must be seen by all that what is granted by the Public Authority for the Public good, not for that of individuals, may be withdrawn and otherwise applied, when the Public good so requires; with an equitable saving or indemnity only in behalf of the individuals actually enjoying vested emoluments. Nor can it long be believed that Altho' the owner of property cannot secure its descent but for a short period even to those who inherit his blood, he may entail it irrevocably and forever on those succeeding to his creed however absurd or contrary to that of a more enlightened Age. According to such doctrines, the Great Reformation of Ecclesiastical abuses in the 16th Century was itself the greatest of abuses; and entails or other fetters attached to the descent of property by legal acts of its owners, must be as lasting as the Society suffering from them.

It may well be supposed, Should William & Mary be transplanted to Richmond, that those interested in the City will unite with those partial to the College, and both be reinforced by the enemies of the University, in efforts to aggrandize the former into a Rival of the latter; and that their hopes of success will rest a good deal on the advantage presented at Richmond to Medical Students in the better chance of Anatomic subjects; and in the opportunity of Clinical Lectures; and to Law Students in the presence of the Upper Courts. It will not surprize

if some of the most distinguished of the Bar and Bench should take the Lecturing Chair either for profit, or to give an attractive eclât to the regenerated Institution. As the Medical & Law Departments may invite the greatest number of Pupils, and of course be the most profitable to Professors, the obligation on us is the greater to engage for the University conspicuous qualifications for those Chairs. I trust this has been done in the Medical appointment actually made, & hope we shall not be unsuccessful in making the other. In opening the door a little wider for the admission of students of the Ancient Languages, it will be found, I think, that we did well: considering the competition for students that may be encountered, and the importance of filling our Dormitories at an early period.

I return the letter of Mr. Cabell, and as your answer may be a fair Copy for your files I return that also.

Yours always & affectionately

I write a few lines to Gov^r^ Barbour, on the Virg^a^. claim in which the University is interested; tho: it is I believe only applying the spur to a willing steed.

TO HENRY LEE. MAD. MSS.

MONTP^R^, January 14, 1825.

I have rec^d^ Sir yours of the 6th inst, and have looked over the printed sheet inclosed in it. Of the literary character of the paper I may express a laudatory opinion, without risk of contravening

that of others. As a political disquisition, it embraces questions both of magnitude and of nicety, on which opinions may be various, and of which a critical review does not lie within the compass of a letter, were it permitted by leisure and favoured by the circumstances of the moment.[1]

The nature & extent of the obligation on a representative to be guided by the known will of his Constituents, though an old question, seems yet to be in a controvertible state. In general it may be said to be often a verbal controversy. That the obligation is not in strictness constitutional or legal, is manifest; since the vote of the Representative is equally valid & operative whether obeying or violating the instruction of his constituents. It can only be a moral obligation to be weighed by the conscience of the Representative, or a prudential one to be enforced by the penal displeasure of his Constituents.

In what degree a plurality of votes is evidence of the will of the Majority of voters, must depend on circumstances more easily estimated in a given case than susceptible of general definition. The greater the number of candidates among whom the votes are divided, the more uncertain, must, of course, be the inference from the plurality with respect to the majority.

In our complex system of polity, the public will,

[1] The House of Representatives was about to vote for the candidates for the Presidency and elected John Quincy Adams over Crawford and Jackson, on February 9th.

as a source of authority, may be the Will of the People as composing one nation; or the will of the States in their distinct & independent capacities; or the federal will as viewed, for example, thro' the Presidential Electors, representing in a certain proportion both the Nation & the States. If in the eventual choice of a President the same proportional rule had been preferred, a joint ballot by the two Houses of Congress would have been substituted for the mode which gives an equal vote to every State however unequal in size. As the Constitution stands, and is regarded as the result of a compromise between the larger & smaller States, giving to the latter the advantage in selecting a president from the Candidates, in consideration of the advantage possessed by the former in selecting the Candidates from the people, it cannot be denied whatever may be thought of the Constitutional provision, that there is, in making the eventual choice, no other controul on the votes to be given, whether by the representatives of the smaller or larger States, but their attention to the views of their respective Constituents and their regard for the public good.

You will not forget that the above remarks, being thrown out merely in consequence of your application, are for yourself, not for others. Though penned without the most remote allusion to the particular case before the Public, or even a knowledge of its actual posture & aspects, they might be misconstrued by the propensity of the conjuncture to view things thro' that medium.

I return the two letters inclosed in yours, which I ought not to do without expressing the high respect I entertain for both the writers; Offering to yourself my wishes for your useful success in whatever line of literature you may finally determine to exercise your talents.

TO THOMAS JEFFERSON. MAD. MSS.

MONTPELLIER, Feb^{y} 8, 1825.

DEAR SIR The letters from Mr Cabell are herein returned. I just see that he has succeeded in defeating the project for removing the College from Williamsburg.

I hope your concurrence in what I said of Mr Barbour will not divert your thoughts from others. It is possible that the drudgery of his profession, the uncertainty of Judicial appointment acceptable to him, and some other attractions at the University for his young family, might reconcile him to a removal thither; but I think the chance slender.

I have looked with attention over your intended proposal of a text book for the Law School. It is certainly very material that the true doctrines of liberty, as exemplified in our Political System, should be inculcated on those who are to sustain and may administer it. It is, at the same time, not easy to find standard books that will be both guides & guards for the purpose. Sidney & Locke are admirably calculated to impress on young minds the right of Nations to establish their own Govern-

ments, and to inspire a love of free ones; but afford no aid in guarding our Republican Charters against constructive violations. The Declaration of Independence, tho' rich in fundamental principles, and saying every thing that could be said in the same number of words, falls nearly under a like observation. The "Federalist" may fairly enough be regarded as the most authentic exposition of the text of the federal Constitution, as understood by the Body which prepared & the Authority which accepted it. Yet it did not foresee all the misconstructions which have occurred; nor prevent some that it did foresee. And what equally deserves remark, neither of the great rival Parties have acquiesced in all its comments. It may nevertheless be admissible as a School book, if any will be that goes so much into detail. It has been actually admitted into two Universities, if not more— those of Harvard and Rh: Island; but probably at the choice of the Professors, without any injunction from the superior authority. With respect to the Virginia Document of 1799, there may be more room for hesitation. Tho' corresponding with the predominant sense of the Nation; being of local origin & having reference to a state of Parties not yet extinct, an absolute prescription of it, might excite prejudices against the University as under Party Banners, and induce the more bigoted to withhold from it their sons, even when destined for other than the studies of the Law School. It may be added that the Document is not on every

point satisfactory to all who belong to the same Party. Are we sure that to our brethren of the Board it is so? In framing a political creed, a like difficulty occurs as in the case of religion tho' the public right be very different in the two cases. If the Articles be in very general terms, they do not answer the purpose; if in very particular terms, they divide & exclude where meant to unite & fortify. The best that can be done in our case seems to be, to avoid the two extremes, by referring to selected Standards without requiring an unqualified conformity to them, which indeed might not in every instance be possible. The selection would give them authority with the Students, and might controul or counteract deviations of the Professor. I have, for your consideration, sketched a modification of the operative passage in your draught, with a view to relax the absoluteness of its injunction, and added to your list of Documents the Inaugural Speech and the Farewell Address of President Washington. They may help down what might be less readily swallowed, and contain nothing which is not good; unless it be the laudatory reference in the Address to the Treaty of 1795 with G. B. which ought not to weigh against the sound sentiments characterizing it.

After all, the most effectual safeguard against heretical intrusions into the School of Politics, will be an Able & Orthodox Professor, whose course of instruction will be an example to his successors, and may carry with it a sanction from the Visitors.

Affectionately yours.

Sketch.

And on the distinctive principles of the Government of our own State, and of that of the U. States, the best guides are to be found in—1. The Declaration of Independence, as the fundamental act of Union of these States. 2. the book known by the title of the "Federalist," being an Authority to which appeal is habitually made by all & rarely declined or denied by any, as evidence of the general opinion of those who framed & those who accepted the Constitution of the U. States on questions as to its genuine meaning. 3. the Resolutions of the General Assembly of Virg[a] in 1799, on the subject of the Alien & Sedition laws, which appeared to accord with the predominant sense of the people of the U. S. 4. The Inaugural Speech & Farewell Address of President Washington, as conveying political lessons of peculiar value; and that in the branch of the School of law which is to treat on the subject of Gov[t], these shall be used as the text & documents of the School.

TO NICHOLAS BIDDLE.

CHIC. HIST. SOC. MSS.

MONTP[R] near O. C. H. Ap. 16. 25

DEAR SIR Such has been of late years the unfavorableness of the seasons for the staple productions in this quarter, and of the markets also for the main one, and such the disappointment in

collecting debts on which I counted, that I find it necessary to resort either to a moderate loan or to a sale of property, which at the present juncture would be made to great disadvantage. The first alternative is of course preferable, the rather as the last, if not finally avoided, is more likely to be alleviated than made worse by delay.

On the ground thus explained, I would ask the favor of you to say whether it be consistent with the views of the Bank of the U. S. to give me a credit for a sum not exceeding six thousand dollars, at the lowest allowable rate of interest; and if so, with what indulgence as to the period or periods for repaying the principal. It is proper to add that for making the Bank secure, real estate of ample amount and without flaw or incumbrance of any sort will be pledged in whatever form may be prescribed.

Should this application be successful may I ask as a further favor that your answer may be accompanied or followed by the documents to be executed on my part, prepared according to the requites of the Bank. I may find it convenient to draw for a part of the fund as soon as the arrangements will permit.[1]

[1] Biddle was then President of the United States Bank. He replied April 26th that the bank had adopted a rule forbidding the advance of money on real estate for indeterminate periods.

TO BENJAMIN WATERHOUSE. MAD. MSS.

MONTP^{R} July 13, 1825.

D^{R} SIR I have rec^{d} your friendly letter of June 30, and congratulate you on your safe return from so long a journey. The fact you confirm with respect to Gen: Hull furnishes the best apology for the imbecility which occasioned his downfall; and his friends would shew more discretion in availing themselves of it, than in attempts to decorate him with artificial laurels. I am truly sorry for the injury sustained by our friend, Gen^{l} Dearborn; whose character forms such a contrast to that of the Mock Hero of Detroit.[1] I hope, as I am sure you wish, that your ominous inferences may be followed by

[1] The apoplectic attack & its effect as related by Dr Waterhouse should be extracted from his letter and accompany this.—*Madison's Note.* Waterhouse wrote June 30th from Cambridge:

"You may have seen in the papers that the miserable General H[ull] has been treated with a public dinner; at which presided a son of the late worthy Gov^{r} Sullivan, and nephew to the General—a degenerate plant of a strange (foreign) vine—the bitterest, & most inveterate of the whole high-federal gang—a man notorious for having dishonored his Father and his Mother, and who had doubtless congenial feelings with the military convict.

"I mentioned that Hull had a stroke of apoplexy, a year, perhaps, before his appointment of General on the Canada expedition. I have refreshed my memory since I came home, and therefore repeat, that a few miles from my house, at a review of the Middlesex militia, whereof the late Speaker General Varnum was commanding officer, General Hull fell senseless, and, if I recollect rightly, was carried home in that condition; from which time, he never appeared to be the man he was before, insomuch that I remember people spoke of it, when his appointment was announced.—The gallant General Miller called on me yesterday when we refreshed each other's memories on the events of Hull."—*Mad. MSS.*

a proof that his case is an exception to the general rule which suggested them.

You ask whether you are too old or too deficient in political information for public service abroad. To the latter question, none, I presume would say no; and, judging from what I have seen, I could not give a different answer to the former. If there be precedents of an adverse sort, there are so many on the favorable side, that every individual case ought at least to be decided on its own merits. In such an appeal, you will doubtless find better testimony than mine, in those more free from a suspicion of chronological sympathies with three score and ten.

Mrs M. desires me to express for her the respectful & cordial sentiments with which your interesting conversations inspired her, and to include her in all the good wishes, which I tender you with the assurances of my great esteem

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TO FRANCES WRIGHT. MAD. MSS.

MONTPELLIER Sep^{r} 1, 1825.

DEAR MADAM Your letter to Mrs. Madison, containing observations addressed to my attention also, came duly to hand, as you will learn from her, with a printed copy of your plan for the gradual abolition of slavery in the U. States.

The magnitude of this evil among us is so deeply felt, and so universally acknowledged, that no merit could be greater than that of devising a satisfactory

remedy for it. Unfortunately the task, not easy under any other circumstances, is vastly augmented by the physical peculiarities[1] of those held in bondage, which preclude their incorporation with the white population; and by the blank in the general field of labour to be occasioned by their exile; a blank into which there would not be an influx of white labourers, successively taking the place of the exiles, and which, without such an influx, would have an effect distressing in prospect to the proprietors of the soil.

The remedy for the evil which you have planned is certainly recommended to favorable attention by the two characteristics, 1. that it requires the voluntary concurrence of the holders of the slaves with or without pecuniary compensation: 2 that it contemplates the removal of those emancipated, either to a foreign or distant region: And it will still further obviate objections, if the experimental establishments should avoid the neighbourhood of settlements where there are slaves.

Supposing these conditions to be duly provided for, particularly the removal of the emancipated blacks, the remaining questions relate to the aptitude

[1] These peculiarities, it wd. seem are not of equal force in the South American States, owing in part perhaps to a former degradation produced by colonial vassalage, but principally to the lesser contrast of colours. The difference is not striking between that of many of the Spanish & Portuguese Creoles & that of many of the mixed breed. —*Madison's Note.* Miss Wright's pamphlet was *A Plan for the gradual abolition of Slavery in the United States without danger or loss to the Citizens of the South*, Baltimore, 1825.

& adequacy of the process by which the slaves are at the same time to earn the funds, entire or supplemental, required for their emancipation & removal; and to be sufficiently educated for a life of freedom and of social order.

With respect to a proper course of education no serious difficulties present themselves. And as they are to continue in a state of bondage during the preparatory period, & to be within the jurisdiction of States recognizing ample authority over them, a competent discipline cannot be impracticable. The degree in which this discipline will enforce the needed labour, and in which a voluntary industry will supply the defect of compulsory labour, are vital points on which it may not be safe to be very positive without some light from actual experiment.

Considering the probable composition of the labourers, & the known fact that where the labour is compulsory, the greater the number of labourers brought together (unless indeed where a co-operation of many hands is rendered essential by a particular kind of work or of machinery) the less are the proportional profits, it may be doubted whether the surplus from that source merely beyond the support of the establishment, would sufficiently accumulate in five or even more years, for the objects in view. And candor obliges me to say that I am not satisfied either that the prospect of emancipation at a future day will sufficiently overcome the natural and habitual repugnance to labour, or that there is such

an advantage of united over individual labour as is taken for granted.

In cases where portions of time have been allotted to slaves, as among the Spaniards, with a view to their working out their freedom, it is believed that but few have availed themselves of the opportunity, by a voluntary industry; And such a result could be less relied on in a case where each individual would feel that the fruit of his exertions would be shared by others whether equally or unequally making them; and that the exertions of others would equally avail him, notwithstanding a deficiency in his own. Skilful arrangements might palliate this tendency, but it would be difficult to counteract it effectually.

The examples of the Moravians, the Harmonites and the Shakers in which the United labors of many for a common object have been successful, have no doubt an imposing character. But it must be recollected that in all these Establishments there is a religious impulse in the members, and a religious authority in the head, for which there will be no substitutes of equivalent efficacy in the Emancipating establishment. The code of rules by which Mr. Rap manages his conscientious & devoted flock, & enriches a common treasury, must be little applicable to the dissimilar assemblage in question.[1] His experience may afford valuable aid, in its general organization, and in the distribution & details of the work to be performed: But an efficient administration must, as is judiciously proposed, be in

[1] George Rapp, founder of the sect of Harmonists or Harmonites.

hands practically acquainted with the Propensities & habits of the members of the new Community.

With a reference to this dissimilarity & to the doubt as to the advantages of associated labour, it may deserve consideration whether the experiment would not be better commenced on a scale smaller than that assumed in the prospectus. A less expensive outfit would suffice; labourers in the proper proportions of sex & age would be more attainable; the necessary discipline, and the direction of their labour would be more simple & manageable; and but little time would be lost; or perhaps time gained, as success, for which the chance would according to my calculation be increased, would give an encouraging aspect to the plan, and suggest improvements better qualifying it for the larger scale proposed.

Such, Madam are the general ideas suggested by your interesting communication. If they do not coincide with yours, & imply less of confidence than may be due to the plan you have formed, I hope you will not question either my admiration of the generous philanthropy which dictated it, or my sense of the special regard it evinces for the honor & welfare of our expanding, & I trust rising Republic.

As it is not certain what construction would be put on the view I have taken of the subject, I leave it with your discretion to withhold it altogether, or to disclose it within the limits, you allude to; intimating only that it will be most agreeable to me on all occasions not to be brought before the Public, where there is no obvious call for it.

General Lafayette took his final leave of us a few days ago, expecting to embark about this time in the new frigate with an appropriate name. He carries with him the unanimous blessings of the free nation which has adopted him. If equal honors have not been his portion in that in which he had his birth, it is not because he did not deserve them. This hemisphere at least, & posterity in the other, will award what is due to the nobleness of his mind and the grandeur of his career.

He could add but little to the details explained in the Printed copy of the Abolition Plan, for want of a full knowledge of which justice may not have been done it. Mr. Davis has not yet favoured us with the promised call. I shall receive his communications on the subject, with attention & pleasure.

The date of this letter will shew some delay in acknowledging the favor of yours. But it is expected to be at Nashville by the time noted for your arrival there, and a prolonged stay in the post office was rather to be avoided than promoted.

I join Mrs. M. in the hope that we shall not be without the opportunity of again welcoming you & your sister to Montp^{r} tendering you in the mean time my respectful salutations.

TO FREDERICK BEASLEY. MAD. MSS.

MONTPELLIER, Nov^{r} 20, 1825.

DEAR SIR I have duly rec^{d} the copy of your little tract on the proofs of the Being & Attributes

of God.[1] To do full justice to it, would require not only a more critical attention than I have been able to bestow on it, but a resort to the celebrated work of Dr. Clarke, which I read fifty years ago only, and to that of Dr Waterland also which I never read.

The reasoning that could satisfy such a mind as that of Clarke, ought certainly not to be slighted in the discussion. And the belief in a God All Powerful wise & good, is so essential to the moral order of the World & to the happiness of man, that arguments which enforce it cannot be drawn from too many sources nor adapted with too much solicitude to the different characters & capacities to be impressed with it.

But whatever effect may be produced on some minds by the more abstract train of ideas which you so strongly support, it will probably always be found that the course of reasoning from the effect to the cause, "from Nature to Nature's God," Will be the more universal & more persuasive application.

The finiteness of the human understanding betrays itself on all subjects, but more especially when it contemplates such as involve infinity. What may safely be said seems to be, that the infinity of time & space forces itself on our conception, a limitation of either being inconceivable; that the mind prefers at once the idea of a self-existing cause to that of an infinite series of cause & effect,

[1] *Vindication of the Argument a priori in Proof of the Being and Attributes of God, from the Objection of Dr Waterland.*

which augments, instead of avoiding the difficulty; and that it finds more facility in assenting to the self-existence of an invisible cause possessing infinite power, wisdom & goodness, than to the self-existence of the universe, visibly destitute of those attributes, and which may be the effect of them. In this comparative facility of conception & belief, all philosophical Reasoning on the subject must perhaps terminate. But that I may not get farther beyond my depth, and without the resources which bear you up in fathoming efforts, I hasten to thank you for the favour which has made me your debtor, and to assure you of my esteem & my respectful regards

TO THOMAS RITCHIE. MAD. MSS.

MONTPELLIER, Decr 18, 1825

DEAR SIR Yours of the 10th inst: was recd a few days ago & I give it the earliest answer which circumstances have permitted.

It has been impossible not to observe the license of construction applied to the Constitution of the U. States; and that the premises from which powers are inferred, often cover more ground than inferences themselves.

In seeking a remedy for these aberrations, we must not lose sight of the essential distinction, too little heeded, between assumptions of power by the General Government, in opposition to the Will of the Constituent Body, and assumptions by the Constituent Body through the Government as the

Organ of its will. In the first case, nothing is necessary but to rouse the attention of the people, and a remedy ensues thro' the forms of the Constitution. This was seen when the Constitution was violated by the Alien and Sedition Acts. In the second case, the appeal can only be made to the recollections, the reason, and the conciliatory spirit of the Majority of the people agst their own errors; with a persevering hope of success, and an eventual acquiescence in disappointment unless indeed oppression should reach an extremity overruling all other considerations. This second case is illustrated by the apparent call of a majority of the States & of the people for national Roads & Canals; with respect to the latter of which, it is remarkable that Mr. Hamilton, himself on an occasion when he was giving to the text of the Constitution its utmost ductility, (see his Report on the Bank) was constrained to admit that they exceeded the authority of Congress.

All power in human hands is liable to be abused. In Governm^{ts} independent of the people, the rights & interests of the whole may be sacrificed to the views of the Governm^{t} In Republics, where the people govern themselves, and where of course the majority Govern, a danger to the minority, arises from opportunities tempting a sacrifice of their rights to the interests real or supposed of the Majority. No form of Gov^{t} therefore can be a perfect guard agst the abuse of Power. The recommendation of the Republican form is that the danger of

abuse is less than in any other; and the superior recommendation of the federo-Republican system is, that whilst it provides more effectually against external danger, it involves a greater security to the minority against the hasty formation of oppressive majorities.

These general observations lead to the several questions you ask as to the course which, in the present state of things, it becomes Virginia to pursue.

1. "Ought an amendment of the Constitution, giving to Congress a Power as to Roads & Canals, to be proposed on her part; and what part taken by her if proposed from any other quarter?"

Those who think the power a proper one, and that it does not exist, must espouse such an amendment; and those who think the power neither existing nor proper, may prefer a specific grant forming a restrictive precedent, to a moral certainty of an exercise of the power, furnishing a contrary precedent. Of the individual ways of thinking on this point, you can probably make a better estimate than I can.

2. "Ought a proposed amendment to comprize a particular guard agst the sweeping misconstruction of the terms, 'common defence and general welfare.'"

The wish for such a guard is natural. But the fallacious inferences from a failure however happening, would seem to require for the experiment a very flattering prospect of success. As yet the unlimited power expressed by the terms, if disjoined from the explanatory specifications, seems

to have been claimed for Congress rather incidentally & unimpressively, than under circumstances indicating a dangerous prevalence of the heresy. Gov. Van Ness alone appears to have officially adopted it; and possibly with some unexpressed qualification. Has not the Supreme Court of the U. S. on some occasion disclaimed the import of the naked terms as the measure of Congressional authority? In general the advocates of the Road & Canal powers, have rested the claim on deductions from some one or more of the enumerated grants.

The doctrine presenting the most serious aspect is that which limits the claim to the mere "appropriation of money" for the General Welfare. However untenable or artificial the distinction may be, its seducing tendencies & the progress made in giving it a practical sanction, render it pretty certain that a Constitutional prohibition is not at present attainable; whilst an abortive attempt would but give to the innovation a greater stability. Should a specific amendment take place on the subject of roads & canals, the zeal for this appropriating power would be cooled by the provision for the primary & popular object of it; at the same time that the implied necessity of the amendment would have a salutary influence on other points of Construction.

3. "Ought Virg.ª to protest agᵉᵗ the Power of internal improvement by Roads & Canals; with an avowal of readiness to acquiesce in a decision agᵉᵗ her by ¾ of her Sister States?"

By such a decision is understood a mere expression

of concurrent opinions by ¾ of the State Legislatures. However conciliatory the motives to such a proposition might be, it could not fail to be criticised as requiring a surrender of the Constitutional rights of the majority in expounding the Constitution, to an extra Constitutional project of a protesting State. May it not be added that such a test, if acceded to, would, in the present state of Public Opinion, end in a riveting decision against Virginia?

Virginia has doubtless a right to manifest her sense of the Constitution, and of proceedings under it, either by protest or other equivalent modes. Perhaps the mode as well suited as any to the present occasion, if the occasion itself be a suitable one, would be that of instructions to her Representatives in Cong.ˢ to oppose measures violating her constructions of the Instrument; with a preamble appealing, for the truth of her constructions to the contemporary expositions by those best acquainted with the intentions of the Convention which framed the Constitution; to the Debates & proceedings of the State Conventions which ratified it; to the universal understanding that the Gov.ᵗ of the Union was a limited not an unlimited one; to the inevitable tendency of the latitude of construction in behalf of internal improvements, to break down the barriers against unlimited power; it being obvious that the ingenuity which deduces the authority for such measures, could readily find it for any others whatever; and particularly to the inconclusiveness of the reasoning from the sovereign character of the powers

vested in Cong.s, and the great utility of particular measures, to the rightful exercise of the powers required for such measures; a reasoning which however applicable to the case of a single Gov.t charged with the whole powers of Gov.t loses its force in the case of a compound Gov.t like that of the U. S., where the delegated sovereignty is divided between the General & the State Gov.ts; where one sovereignty loses what the other gains; and where particular powers & duties may have been withheld from one, because deemed more proper to be left with the other.

I have thrown out these hasty remarks more in compliance with your request than from a belief that they offer anything new on the beaten subject. Should the topics touched on be thought worthy on any account of being publicly developed, they will be in hands very competent to the task. My views of the Constitutional questions before the public are already known as far as they can be entitled to notice, and I find myself every day more indisposed, and, as may be presumed, less fit, for reappearance on the political Arena.

TO THOMAS JEFFERSON. MAD. MSS.

MONTP.R, Decr 28, 1825.

DEAR SIR I rec.d yesterday evening yours of the 24th inst: inclosing a paper drawn up with a view to the question of "Roads & Canals," and to the

course of proceeding most expedient for the Legislature of Virg[a], now in session.[1]

In my retired position it is difficult to scan the precise tendency of measures addressed to the opinions & feelings of the States & of their Representatives; these being imperfectly understood, and continually undergoing also more or less of modifications. In general, I have doubted the policy of any attempt by Virginia to take the lead, or the appearance of it, in opposing the obnoxious career of Congress, or, rather of their Constituents; considering the prejudices which seem to have been excited of late ag[st] her. And the doubt is now strengthened, by the diversity of opinion apparently taking place among her opponents, which if not checked by interpositions on her part, may break the Phalanx with which she has to deal. Hitherto the encroachments of Congress have not proceeded far enough to rouse the full attention of some of the States; who tho' not opposing the limited expence of Surveying Engineers, or the productive subscriptions to projected improvements by particular States, will unite with Virginia in combating the exercise of Powers which must not only interfere with their local jurisdictions, but expend vast sums of money, from which their share of benefit, would not be proportioned to their share of the burden. To this consideration I refer the recent proposition

[1] The paper was the draft of a protest drawn up by Jefferson with a view to its adoption by the Virginia assembly. *Jefferson's Writings* (P. L. Ford), xii., 418 *n.*

of Mr. Bailey. It may have had in part, the motives you allude to. But it can be explained by the local calculations under its surface. The members of Cong^{s} from N. England have never been entirely united on the subject of National Canals &c. and altho' sundry projects of that sort have lately appeared in that quarter as elsewhere, it is probable that most of them will be found either impracticable, or threatening changes in the channels of trade causing them to be abandoned. It is pretty certain that the progress made by N. England in her internal improvements reduces her interest in the prosecution of them with the national revenue, below her contributions to it, or her portion of a dividend from it. The remark is applicable to the weighty State of N. York, where the power assumed by Congress has always been viewed with a degree of jealousy, and where I believe a decided opposition would be made agst a claim that w^{d} touch her soil or introduce a jurisdiction over it, without the express consent of the State. Her Senator Van Buren, it appears, has already taken up the subject, and no doubt with a purpose of controuling the assumed power. The progress made by other States in like improvements under their own authority, may be expected to enlist some of them on the same side of the question. Were Congress indeed possessed of the undisputed power in the case, it would be a problem, whether it would not be Paralysed by the difficulty of adapting a system of Roads & Canals to the diversified situations of the States,

and of making a satisfactory apportionment of the benefits & burdens among them. As this is a view of the subject however not likely to quiet the apprehensions which prevail, and might yield to fuller information with regard to it, I should suppose Virginia would find an eligible compromise in Mr. Bailey's project; notwithstanding the bearing it may have in favor of a prolonged tariff, as the nurse of the manufacturing system. It may be well at least to know the weakness of the proposition in and out of Congress, before any irrevocable decision be had at Richmond.

Should any strong interposition there be ultimately required, your paper will be a valuable resort. But I must submit to your consideration whether the expedient with which it closes of enacting statutes of Congress into Virginia Statutes, would not be an anomaly without any operative character, besides the objection to a lumping and anticipating enactment. As the Acts in question would not be executed by the ordinary functionaries of Virg[a], and she could not convert the federal into State functionaries, the whole proceeding would be as exclusively under the federal authority as if the legislative interference of Virg[a] had not taken place; her interference amounting to nothing more than *a recommendation* to her Citizens to acquiesce in the exercise of the power assumed by Congress, for which there is no apparent necessity or obligation.

Previous to the rec[t] of your communication, a letter from Mr. Ritchie, marked with all his warm

feelings, on the occasion, made a pressing call for my opinions and advice. I inclose it with my answer, in which you will see the course which occurred to me as most eligible or least questionable; Bailey's proposition being at the time unknown. I was apprehensive that encouragement to a stronger course, in the present stage of the business & temper of the Assembly might lead to a stile & tone irritating rather than subduing prejudices, instead of the true policy as well as dignity of mingling as much of molliter in modo, as would be consistent with the fortiter in re. Whilst Congress feel themselves backed by a Majority of their Constituents, menace or defiance, will never deter them from their purposes; particularly when such language proceeds from the section of the Union, to which there is a habit of alluding as distinguished by causes of internal weakness.

You asked an early answer & I have hurried one, at the risk of crudeness in some of its views of the subject. If there be errors, they can do no harm when under your controul.

Health and all other good wishes

REMARKS ON AN EXTRACT FROM HAMILTON'S REPORT PUBLISHED IN THE RICHMOND ENQUIRER.

MAD. MSS.

In the Richmond Enquirer of the 21st is an Extract from the Report of Secretary Hamilton, on the Constitutionality of the Bank, in which he opposes a resort, in expounding the Constitution, to the rejection of a proposition in the Con-

vention, or to any evidence extrinsic to the text.[1] Did he not advise, if not draw up, the Message refusing to the House of Rep.s the papers relating to Jay's Treaty, in which President Washington combats the right of their Call by appealing to his personal knowledge of the intention of the Convention, having been himself a member of it, to the authority of a rejected proposition appearing on the Journals of the Convention, and to the opinions entertained in the State Conventions? Unfortunately the President had forgotten his sanction to the Bank, which disregarded a rejected proposition on that subject. This case too was far more in point, than the proposition in that of the Treaty papers. Whatever may be the degree of force in some of the remarks of the

[1] The extract was as follows:

"The Secretary of State will not deny that, whatever may have been the intentions of the framers of a constitution or of a law; that intention is to be sought for in the instrument itself, according to the usual and established rules of construction. Nothing is more common than for laws to express and effect more or less than was intended. If, then, a power to erect a corporation in any case, be deducible by fair inference from the whole, or any part, of the numerous provisions of the constitution of the U. States, arguments drawn from extrinsic circumstances regarding the intention of the convention, must be rejected."

Washington's message of March 24, 1796, said:

"Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject. . . .

"There is also reason to believe that this construction agrees with the opinions entertained by the State Conventions, when they were deliberating on the Constitution. . . .

"If other proofs than these, and the plain letter of the Constitution itself, be necessary to ascertain the point under consideration, they may be found in the Journals of the General Convention, which I have deposited in the office of the Department of State. In those Journals it will appear, that a proposition was made 'that no treaty should be binding on the United States which was not ratified by a law,' and that the proposition was explicitly rejected."—*Annals of Cong.*, 4th Cong., 1st Sess., p. 761.

Secretary, he pushes them too far. But the contradictions between the Report & the message are palpable.

JANUARY 25, 1826,

TO MORRIS ANTHONY.[1]

MONTPLR., Jany. 27, 1826.

DEAR SIR: I have just received your favor of the 24th instant, and am much obliged by the friendly attention of which it is a proof. There must be some mistake in the case it mentions. No dividend or stock of the United States can belong to me. On my first entrance into public life I formed a resolution from which I never departed to abstain whilst in that situation from dealing in any way in public property or transactions of any kind, and I am satisfied that during my respites and since retirement from the public service I never became possessed of any stock that could give me a title to the derelict in question. It is possible that my father whose name was James and who had I believe a few public certificates accruing from property impressed or furnished for public use, may have neglected after funding them, or the unclaimed dividend may possibly belong to the estate of Bishop Madison whose name was also James.

If you will have the goodness to add to the trouble you have taken a discriptive notice of whatever circumstances of date, of place, of amount, etc., may aid in its tracing the ownership of this balance on the Books, I will put it into the hands of the Acting

[1] From the original kindly loaned by Frederick D. McGuire, Esq., of Washington, D. C.

Executor of my father who will make the proper examination of his papers.

Mrs. M. desires me to make the proper return for your kind remembrances, and joins me in assurances of our cordial respects and good wishes, and of the pleasure we should feel in repeating them within our domicil.

TO THOMAS JEFFERSON. MAD. MSS.

MONTPELLIER, Feb^{y} 24, 1826.

DEAR SIR, Yours of the 17th was duly rec^{d}.[1] The awkward state of the Law Professorship is truly distressing, but seems to be without immediate remedy. Considering the hopeless condition of Mr. Gilmour, a temporary appointment, if an acceptable successor were at hand, whilst not indelicate towards the worthy moribond incumbent, might be regarded as equivalent to a permanent one. And if the hesitation of our Colleagues at Richmond has no reference to Mr. Terril, but is merely tenderness towards Mr. Gilmour, I see no objection to a communication to Mr. T. that would bring him to Virg^{a} at once, and thus abridge the loss of time. The hardheartedness of the Legislature towards what ought to be the favorite offspring of the State, is as reproachful as deplorable. Let us hope that the reflections of another year, will produce a more parental sensibility.

I had noticed the disclosures at Richmond with

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[1] See Jefferson's recital of his financial reverses in his letter.—*Jefferson's Writings* (P. L. Ford), xii., 457.

feelings which I am sure I need not express; any more than the alleviation of them by the sequel. I had not been without fears, that the causes you enumerate were undermining your estate. But they did not reach the extent of the evil. Some of these causes were indeed forced on my attention by my own experience. Since my return to private life (and the case was worse during my absence in Public) such have been the unkind seasons, & the ravages of insects, that I have made but one tolerable crop of Tobacco, and but one of Wheat; the proceeds of both of which were greatly curtailed by mishaps in the sale of them. And having no resources but in the earth I cultivate, I have been living very much throughout on borrowed means. As a necessary consequence, my debts have swelled to an amount, which if called for at the present conjuncture, would give to my situation a degree of analogy to yours. Fortunately I am not threatened with any rigid pressure, and have the chance of better crops & prices, with the prospect of a more leisurely disposal of the property which must be a final resort.

You do not overrate the interest I feel in the University, as the Temple thro which alone lies the road to that of Liberty. But you entirely do my aptitude to be your successor in watching over its prosperity. It would be the pretension of a mere worshipper "remplacer" the Tutelary Genius of the Sanctuary. The best hope is, in the continuance of your cares, till they can be replaced by the sta-

bility and selfgrowth of the Institution. Little reliance can be put even on the fellowship of my services. The past year has given me sufficient intimation of the infirmities in wait for me. In calculating the probabilities of survivorship, the inferiority of my constitution forms an equation at least with the seniority of yours.

It would seem that some interposition is meditated at Richmond against the assumed powers of Internal Improvement; and in the mode recommended by Gov^r^ Pleasants, in which my letter to Mr. Ritchie concurred, of instructions to the Senators in Congress. No better mode, can perhaps be taken, if an interposition be likely to do good; a point on which the opinion of the Virginia members at Washington ought to have much weight. They can best judge of the tendency of such a measure at the present moment. The public mind is certainly more divided on the subject than it lately was. And it is not improbable that the question, whether the powers exist, will more & more give way to the question, how far they ought to be granted.

You cannot look back to the long period of our private friendship & political harmony, with more affecting recollections than I do. If they are a source of pleasure to you, what ought they not to be to me? We cannot be deprived of the happy consciousness of the pure devotion to the public good with which we discharged the trusts committed to us. And I indulge a confidence that sufficient evidence will find its way to another generation, to

ensure, after we are gone, whatever of justice may be withheld whilst we are here. The political horizon is already yielding in your case at least, the surest auguries of it. Wishing & hoping that you may yet live to increase the debt which our Country owes you, and to witness the increasing gratitude, which alone can pay it, I offer you the fullest return of affectionate assurances.

TO NOAH WEBSTER.[1]

MONTPELIER, March 10, 1826.

DEAR SIR—In my letter of Oct. 12, 1804, answering an inquiry of yours of Aug. 20, it was stated that "in 1785, I made a proposition with success in the legislature, (of Virginia,) for the appointment of commissioners, to meet at Annapolis such commissioners as might be appointed by other states, in order to form some plan for investing Congress with the regulation and taxation of commerce." In looking over some of my papers having reference to that period, I find reason to believe that the impression, under which I made the statement, was erroneous; and that the proposition, though probably growing out of efforts made by myself to convince the legislature of the necessity of investing Congress with such powers, was introduced by another member, more likely to have the ear of the legislature on

[1] From "A Collection of Papers on Political, Literary and Moral Subjects." By Noah Webster, LL.D. New York, 1843, p. 172.

See the letter of Oct. 12, 1804, to Webster, *ante*, Vol. VII., p. 164, which this letter amends. The member who introduced Madison's motion in the Virginia legislature was John Tyler.

the occasion, than one whose long and late service in Congress, might subject him to the suspicion of a bias in favor of that body. The journals of the session would ascertain the fact. But such has been the waste of the printed copies, that I have never been able to consult one.

I have no apology to make for the error committed by my memory, but my consciousness, when answering your inquiry, of the active part I took in making on the legislature the impressions from which the measure resulted, and the confounding of one proposition with another, as may have happened to your own recollection of what passed.

It was my wish to have set you right on a point to which your letter seemed to attach some little interest, as soon as I discovered the error into which I had fallen. But whilst I was endeavouring to learn the most direct address, the newspapers apprised me that you had embarked for Europe. Finding that your return may be daily looked for, I lose no time in giving the proper explanation. I avail myself of the occasion to express my hopes that your trip to Europe, has answered all your purposes in making it, and to tender you assurances of my sincere esteem and friendly respects.

TO N. P. TRIST. MAD. MSS.

MONTPELLIER, July 6, 1826.

DEAR SIR—I have just rec^{d} yours of the 4th. A few lines from Dr. Dunglison had prepared me for

such a communication; and I never doubted that the last Scene of our illustrious friend would be worthy of the life which it closed.[1] Long as this has been spared to his Country & to those who loved him, a few years more were to have been desired for the sake of both. But we are more than consoled for the loss, by the gain to him; and by the assurance that he lives and will live in the memory and gratitude of the wise & good, as a luminary of Science, as a votary of liberty, as a model of patriotism, and as a benefactor of human kind. In these characters, I have known him, and not less in the virtues & charms of social life, for a period of fifty years, during which there has not been an interruption or diminution of mutual confidence and cordial friendship, for a single moment in a single instance. What I feel therefore now, need not, I should say, cannot, be expressed. If there be any possible way, in which I can *usefully* give evidence of it, do not fail to afford me an opportunity. I indulge a hope that the unforeseen event will not be permitted to impair *any* of the beneficial measures which were in progress or in project. It cannot be unknown that the anxieties of the deceased were for others, not for himself.

Accept my dear Sir, my best wishes for yourself, & for all with whom we sympathize; in which Mrs. M. most sincerely joins.

[1] Jefferson died July 4th.

TO GEORGE MASON.[1]

MONTPELLIER, July 14, 1826.

I have received, Sir, your letter of the 6th inst. requesting such information as I may be able to give as to the origin of the document, a copy of which was inclosed in it. The motive and manner of the request would entitle it to respect if less easily complied with than by the following statement.

During the session of the General Assembly 1784–5 a bill was introduced into the House of Delegates providing for the legal support of Teachers of the Christian Religion, and being patronized by the most popular talents in the House, seemed likely to obtain a majority of votes. In order to arrest its progress it was insisted with success that the bill should be postponed till the evening session, and in the meantime be printed for public consideration. That the sense of the people might be the better called forth, your highly distinguished ancestor Col. Geo. Mason, Col. Geo. Nicholas also possessing much public weight and some others thought it advisable that a remonstrance against the bill should be prepared for general circulation and signature and imposed on me the task of drawing up such a paper. The draught having received their sanction, a large number of printed copies were distributed, and so extensively signed by the people of every religious denomination that at the ensuing session the projected measure was entirely frustrated;

[1] Copy of the original in the Virginia Historical Society. The enclosure was a copy of the Memorial and Remonstrance against religious assessments. See *ante*, Vol. II., p. 183.

and under the influence of the public sentiment thus manifested the celebrated bill "Establishing Religious Freedom" enacted into a permanent barrier against Future attempts on the rights of conscience as declared in the Great Charter prefixed to the Constitution of the State. Be pleased to accept my friendly respects.

TO HENRY COLMAN. MAD. MSS.

MONTP^{R}, August 25, 1826.

D^{R} SIR I have read with pleasure the copy of your Oration on the 4th of July, obligingly sent me, and for which I beg you to accept my thanks.

With the merits which I have found in the Oration, may I be permitted to notice a passage, which tho' according with a language often held on the subject, I cannot but regard as at variance with reality.

In doing justice to the virtue and valour of the revolutionary army, you add as a signal proof of the former, their readiness in laying down their arms at the triumphant close of the war, "when they had the liberties of their Country within their grasp."

Is it a fact that they had the liberties of their country within their grasp; that the troops then in command, even if led on by their illustrious chief, and backed by the apostates from the revolutionary cause, could have brought under the Yoke the great body of their fellow Citizens, most of them with arms in their hands, no inconsiderable part fresh from the use of them, all inspired with rage at the

patricidal attempt, and not only guided by the federal head, but organized & animated by their local Governments possessing the means of appealing to their interests, as well as other motives, should such an appeal be required?

I have always believed that if General Washington had yielded to a usurping ambition, he would have found an insuperable obstacle in the incorruptibility of a sufficient portion of those under his command, and that the exalted praise due to him & them, was derived not from a forbearance to effect a revolution within their power, but from a love of liberty and of country which there was abundant reason to believe, no facility of success could have seduced. I am not less sure that General Washington would have spurned a sceptre if within his grasp, than I am that it was out of his reach, if he had secretly sighed for it. It must be recollected also that the practicability of a successful usurpation by the army cannot well be admitted, without implying a folly or pusillanimity reproachful to the American character, and without casting some shade on the vital principle of popular Government itself.

If I have taken an undue liberty in these remarks, I have a pledge in the candour of which you have given proofs, that they will be pardoned, and that they will not be deemed, inconsistent with the esteem and cordial respect, which I pray you to accept.

TO MARTIN VAN BUREN. MAD. MSS.

MONTPELLIER, September 20, 1826.

DEAR SIR, Your letter of Aug. 30. has been longer

unanswered than I could have wished; but the delay has been unavoidable.[1] And I am sensible now that the subject invited more of development, than successive occurrences calling off my attention have permitted. The brief view taken of it, will at least be a proof of my disposition to comply with your request, which I regard as a private one, as you will be pleased to regard the answer to it.

I should certainly feel both gratification and obligation in giving any aid in my power towards making the Constitution more appropriate to its objects, & more satisfactory to the nation. But I feel also the arduousness of such a task, arising as well from the difficulty of partitioning and defining Legislative powers, as from the existing diversity of opinions concerning the proper arrangement of the power in question over internal improvements.

Give the power to the General Government as possessing the means most adequate, and the objections are, 1. the danger of abuses in the application of the means to objects so distant from the eye of a Government, itself so distant from the eye of the people, 2. the danger, from an increase of the patronage and pecuniary transactions of the General Government, that the equilibrium between that and the State Governments may not be preserved.

[1] Van Buren wrote from Albany that he intended to propose an amendment to the constitution on the subject of internal improvements in the next Congress, having already done so in the last two sessions. He would be pleased if Madison would draft the amendment.—*Mad. MSS.*

Leave the power exclusively with the States, and the objections are: 1. that being deprived by the Constitution, and even by their local relations (as was generally experienced before the present Constitution was established) of the most convenient source of revenue, the impost on commerce, improvements might not be made even in cases wholly within their own limits. 2. that in cases where roads, & canals ought to pass through contiguous States, the necessary co-operation might fail from a difficulty in adjusting conditions and details, from a want of interest in one of them, or possibly from some jealousy or rivalship in one towards the other. 3. that where roads and canals ought to pass thro' a number of States, particular views of a single State might prevent improvements deeply interesting to the whole nation.

This embarrassing alternative has suggested the expedient which you seem to have contemplated, of dividing the power between the General & State Governm^{ts}, by allotting the appropriating branch to the former, & reserving the jurisdiction to the latter. The expedient has doubtless a captivating aspect. But to say nothing of the difficult of defining such a division, and maintaining it in practice will the nation be at the expence of constructing roads & canals, without such a jurisdiction over them as will ensure their constant subservience to national purposes? Will not the utility and popularity of these improvements lead to a constructive assumption of the jurisdiction by Congress, with the

same sanction of their constituents, as we see given to the exercise of the appropriating power, already stretching itself beyond the appropriating limit.

It seems indeed to be understood, that the policy & advantage of roads & canals have taken such extensive & permanent hold of the public will, that the constructive authority of Congress to make them, will not be relinquished, either by that, or the Constituent Body. It becomes a serious question therefore, whether the better course be not to obviate the unconstitutional precedent, by an amendatory article expressly granting the power. Should it be found as is very possible, that no effective system can be agreed on by Congress, the amendment will be a recorded precedent against constructive enlargements of power; and in the contrary event, the exercise of the power will no longer be a precedent in favour of them.

In all these cases, it need not be remarked I am sure, that it is necessary to keep in mind, the distinction between a usurpation of power by Congress against the will, and an assumption of power with the approbation, of their constituents. When the former occurs, as in the enactment of the alien & sedition laws, the appeal to their Constituents sets everything to rights. In the latter case, the appeal can only be made to argument and conciliation, with an acquiescence, when not an extreme case, in an unsuccessful result.

If the sole object be to obtain the aid of the federal treasury for internal improvements by roads &

canals, without interfering with the jurisdiction of the States, an amendment need only say, "Congress may make appropriations of moneys for roads and canals, to be applied to such purposes by the Legislatures of the States within their respective limits, the jurisdiction of the States remaining unimpaired."

If it be thought best to make a constitutional grant of the entire Power, either as proper in itself, or made so by the moral certainty, that it will be constructively assumed, with the sanction of the national will, and operate as an injurious precedent, the amendment cannot say less, than that "Congress may make roads & canals, with such jurisdiction as the cases may require."

But whilst the terms "common defence & general welfare," remain in the Constitution unguarded agst the construction which has been contended for, a fund of power, inexhaustible & wholly subversive of the equilibrium between the General and the State Gov^{ts} is within the reach of the former. Why then, not precede all other amendments by one, expunging the phrase which is not required for any harmless meaning; or making it harmless by annexing to it the terms, "in the cases required by this Constitution."

With this sketch of ideas, which I am aware may not coincide altogether with yours, I tender renewed assurances of my esteem & friendly wishes.[1]

[1] On October 15 Madison wrote to Van Buren acknowledging the receipt of the report of the committee on roads and canals: "The committee have transcended all preceding advocates of the doctrine they espouse, in appealing to the old articles of Confederation for its support. Whatever might have been the practice under those articles

TO SAMUEL HARRISON SMITH.[1]

MONTPELLIER, Novr. 4, 1826.

DEAR SIR I have recd your letter of Ocr 25 requesting from me any information which would assist you in preparing a memoir of Mr Jefferson for the Columbian Institute. Few things would give me more pleasure than to contribute to such a task; and the pleasure would certainly be increased by that of proving my respect for your wishes. I am afraid however, I can do little more than refer you to other sources, most of them probably already known to you.

It may be proper to remark that Mr Ths Jefferson Randolph, Legatee of the Manuscripts of Mr Jefferson, is about to publish forthwith a Memoir left by his

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it would be difficult to shew that it was always kept within the prescribed limits. The Revolutionary Congress was the Offspring of the great crisis, and the exercise of its powers prior to the final ratification of the articles, governed by the law of necessity, or palpable expediency. And after that event there seems to have been often more regard to the former latitude of proceeding than to the text of the Instrument; assumptions of power apparently useful, being considered little dangerous in a Body so feeble, and so completely dependent on the authority of the States. There is no evidence however that the old Congs ever assumed such a construction of the terms 'Comon defence & general welfare' as is claimed for the new. Nor is it probable that Gen: Washington in the sentiments quoted from or for him, had more in view than the great importance of measures beyond the reach of individual States, and, if to be executed at all, calling for the general authority of the Union. Such modes of deducing power, may be fairly answered by the question, what is the power that may not be grasped with the aid of them?"—*Mad. MSS.*

[1] From the original owned by the late J. Henley Smith of Washington. Smith's address was printed in 1827 (Washington): "Memoir of the life, character and writings of Thomas Jefferson; delivered in the Capitol, before the Columbian institute on the sixth of January, 1827, and published at their request."

grandfather in his own hand writing, and if not in every part intended by him for the press, is thought to be throughout in a state well fitted for it. The early parts are I believe purely, and in some instances, minutely biographical; and the sequel, embracing a variety of matter, some of it peculiarly valuable, is continued to his acceptance of the Secretaryship of State under the present constitution of the U. States. Should this work appear in time, it would doubtless furnish your pencil with some of the best materials for your portrait.[1]

The period between his leaving Congress in 1776, and his mission to France, was filled chiefly by his labours on the Revised Code,—the preparation of his "Notes on Virginia" (an obiter performance):—his Governorship of that State:—and by his services as a member of Congress, and of the Committee of the States at Annapolis.

The Revised code in which he had a masterly share, exacted perhaps the most severe of his public labours. It consisted of 126 Bills, comprizing and recasting the whole statutory code, British & Colonial, then admitted to be in force, or proper to be adopted, and some of the most important articles of the unwritten law, with original laws on particular subjects; the whole adapted to the Independent & Republican form of Government. The work tho' not enacted in the mass, as was contemplated, has been a mine of Legislative wealth, and a model of

[1] The work was printed by Thomas Jefferson Randolph. It may be seen in the *Works of Jefferson* (P. L. Ford), Federal Edition, i., 3.

statutory composition, containing not a single *superfluous* word, and preferring always words & phrases of a meaning fixed as much as possible by oracular treatises, or solemn adjudications.

His "Notes on Virginia" speak for themselves.

For his administration of the Gov^{t} of Virginia, the latter chapters of the 4th vol. of Burke's history continued by Gerardine, may be consulted. They were written with the advantage of M^{r} Jefferson's papers opened fully by himself to the author. To this may now be added his letter just published from M^{r} Jefferson to Maj^{r} H. Lee, which deserves particular notice, as an exposure & correction of historical errors, and rumoured falsehoods, assailing his reputation.

His services at Annapolis will appear in the Journals of Congress of that date. The answer of Congress to the resignation of the Commander in Chief, an important document, attracts attention by the shining traces of his pen.

His diplomatic agencies in Europe are to be found only in the unpublished archives at Washington, or in his private correspondence, as yet under the seal of confidence. The Memoir in the hands of his Grandson will probably throw acceptable lights on this part of his history.

The University of Virginia, as a temple dedicated to science & Liberty, was after his retirement from the political sphere, the object nearest his heart, and so continued to the close of his life. His devotion to it was intense, and his exertions unceasing.

It bears the stamp of his genius, and will be a noble monument of his fame. His general view was to make it a nursery of Republican patriots as well as genuine scholars. You will be able to form some idea of the progress and scope of the Institution from the 2 inclosed Reports from the Rector for the Legislature (the intermediate Report is not at hand) which as they belong to official sets, you will be so good as to send back at your entire leisure. I may refer also to a very graphic & comprehensive exposé of the present state of the University, lately published in the "National Intelligencer," which will have fallen under your eye.

Your request includes "his general habits of study." With the exception of an intercourse in a session of the Virginia Legislature in 1776, rendered slight by the disparity between us, I did not become acquainted with M^r^ Jefferson till 1779, when being a member of the Executive Council, and he the Governor, an intimacy took place. From that date we were for the most part separated by different walks in public & private life, till the present Gov^r^. brought us together, first when he was Secretary of State and I a member of the House of Rep^s^; and next, after an interval of some years, when we entered, in another relation, the service of the U. S. in 1801. Of his earlier habits of study therefore I can not particularly speak. It is understood that whilst at College [Wm. & Mary] he distinguished himself in all the branches of knowledge taught there; and it is known that he never after ceased to cul-

tivate them. The French language he had learned when very young, and became very familiar with it, as he did with the literary treasures which it contains. He read, and at one time spoke the Italian also; with a competent knowledge of Spanish; adding to both the Anglo-Saxon, as a root of the English, and an element in legal philosophy. The Law itself he studied to the bottom, and in its greatest breadth, of which proofs were given at the Bar which he attended for a number of years, and occasionally throughout his career. For all the fine arts, he had a more than common taste; and in that of architecture; which he studied in both its useful, and its ornamental characters, he made himself an adept; as the variety of orders and stiles, executed according to his plan founded on the Grecian & Roman models and under his superintendance, in the Buildings of the University fully exemplify. Over & above these acquirements, his miscellaneous reading was truly remarkable, for which he derived leisure from a methodical and indefatigable application of the time required for indispensable objects, and particularly from his rule of never letting the sun rise before him. His relish for Books never forsook him, not even in his infirm years and in his devoted attention to the rearing of the University, which led him often to express his regret that he was so much deprived of that luxury, by the epistolary tasks, which fell upon him, and which consumed his health as well as his time. He was certainly one of the most learned men of the age. It may be said of him

as has been said of others that he was a "walking Library," and what can be said of but few such prodegies, that the Genius of Philosophy ever walked hand in hand with him.

I wish, Sir, I could have made you a communication less imperfect. All I say beyond it is that if in the progress of your pen, any particular point should occur on which it may be supposed I could add to your information from other sources, I shall cheerfully obey your call as far as may be in my power.

The subject of this letter reminds me of the "History of the administration of Mr Jefferson," my copy of which, with other things disapppeared from my collection during my absence from the care of them. It would be agreeable to me now to possess a copy and if you can *conveniently* favor me with one, I shall be greatly obliged.

Accept, Sir, assurances of my continued esteem & regard, with a tender of my best respects to Mrs Smith.

TO MARQUIS DE LAFAYETTE. MAD. MSS.

MONTPELLIER, Novr, 1826.

DEAR FRIEND I received some days ago your letter of Augt 28. If I did not invite an earlier one by my example it was because I often heard of you, and was unwilling to add a feather to the oppressive weight of correspondence which I well know to be your unavoidable lot. You will never doubt that your happiness is very dear to me; and I feel the sentiment growing stronger as the loss of others dear to us both shortens the list to which we belong. That which we have lately sustained at Monticello is irreparable; but was

attended with every circumstance that could soothe us under it. I wish I was not obliged to add, "with one affecting exception." His family so long in the lap of all the best enjoyments of life, is threatened with the contrast of pinching poverty. The expences of his numerous household, his extensive hospitalities, and a series of short crops and low markets, to which are to be added old debts contracted in public service abroad and new ones for which private friendship had made him responsible; all these causes together, had produced a situation of which he seems not to have been fully aware, till it was brought home to his reflections by the calls of creditors, (themselves pressed by the difficulties of the times,) and by the impossibility of satisfying them without a complete sacrifice of his property, perhaps not even by that at such a crisis. In this posture of things, he acquiesced in an appeal to the Legislature for the privilege of a Lottery. This was granted, and arrangements made which promised relief, with a residuary competence for his beloved daughter & her children. The general sensation produced by the resort to a Lottery, and by the occasion for it, unfortunately led some of his most enthusiastic admirers, to check the progress of the measure by attempting to substitute patriotic subscriptions, which they were so sanguine as to rely on, till the sad event on the 4 of July, benumbed, as it ought not to have done, the generous experiment; with a like effect, which ought still less to have happened, on the Lottery itself. And it is now found that the subscriptions do not exceed ten or twelve thousand dollars, and the tickets, but a very inconsiderable number, whilst the debts are not much short of one hundred thousand dollars; an amount which a forced sale, under existing circumstances, of the whole estate, (*negroes* included,) would not perhaps reach. Faint hopes exist that renewed efforts may yet effectuate such a sale of tickets as may save something for the family; and fainter ones that the Legislature of the state may interpose a saving hand. God grant it! But we are all aware of the difficulties to be encountered there. I

well know my dear Sir, the pain which this melancholy picture will give you, by what I feel at the necessity of presenting it. I have duly adverted to the generous hint as to the E. Florida location. But for any immediate purpose, it is, in any form whatever, a resource perfectly dormant, and must continue so too long for the purpose in question. Your allusion to it is nevertheless a proof of the goodness which dwells in your heart; and whenever known will be so regarded. The urgency of particular demands has induced the Executor Thomas Jefferson Randolph, who is the Legatee of the Manuscripts, to undertake an immediate publication of a Memoir, partly biographical, partly political and miscellaneous, left in the handwriting of his Grandfather, the proceeds of which he hopes will be of critical use; and if prompt & extensive opportunities be given for subscriptions, there may be no disappointment. The work will recommend itself not only by personal details interwoven into it, but by *Debates in Congress* on the *question of* Independence, and other very important subjects coeval with its Declaration, as the Debates were taken down and preserved by the illustrious member. The memoir will contain also very interesting views of the origin of the French Revolution, and its progress & phenomena, during his Diplomatic residence at Paris, with reflections on its tendencies & consequences. A trial will probably be made to secure the copyright of the publication, both in England and in France. In the latter case your friendly counsel will of course be resorted to· and I mention it that you may in the mean time be turning the subject in your thoughts. The manuscripts of which the Memoir makes a part are great in extent, and doubtless rich in matter; and *discreet* extracts may perhaps prove a further pecuniary resource, from time to time, but how soon and in what degree, I have not the means of judging. Mrs. Randolph with her two youngest children, left Montpellier some days ago, on her way to pass the winter with Mrs. Coolidge. Such a change of scene had become essential to her health as well as to her feelings. She

has made up her mind for the worst results; a merit which quickens the sympathy otherwise so intense. She was accompanied by her son, Th[s] J. Randolph who will endeavor to make arrangements with the Northern Printers for the volume to be published. It will be an Octavo of about three hundred pages.

Your sketch of European prospects is valuable for its facts, & especially for its authenticity. The contents of the foreign Gazettes find their way to us thro' our own; but do not convey every thing as ours do to you. You will have seen the mortifying scenes produced in Congress by the Panama Mission. The fever of party spirit was an endemic which drew into it every ill humour, till the whole body was infected. The malady however was far less malignant out of doors than within; and I hope our S. American friends will make allowances till a development of the real feelings here shall be seen. The Congress at Panama, after a partial execution of its business, has adjourned to Mexico. One of our envoys, Mr. Anderson died on his way there, and Mr. Sergeant the other is still here. Who is to be his associate in the place of Mr. A. is not known; nor is it known when he or they are to set out. Bolivar appears to have given a Constitution to the new State in Peru, of a countenance not altogether belonging to the American family. I have not yet seen its details; whether it shews him an apostate, or the people there, in his view, too benighted as yet for self-government, may possibly be a question.

Another mortifying topic is the Greek equipment at N. York. It appears the ample fund for two Frigates at an early day has procured but one which has but recently sailed. The indignation of the public is highly excited; and a regular investigation of the lamentable abuse is going on. In the mean time Greece is bleeding in consequence of it, as is every heart that sympathizes with her noble cause. You will see by our Gazettes also that the community is drawn into a premature ferment by the partisans of the Presidential

Candidates, the actual incumbent, & Gen! Jackson in whose favor, all the opponents of the other are at present concentrating all their efforts. The race, according to appearances is likely to be a close one. But there is time enough for the political vicissitudes which often occur.

You possess, notwithstanding your distance, better information concerning Miss Wright and her experiment than we do here.[1] We learn only that she has chosen for it a remote spot in the western part of Tennessee, & has commenced her enterprise; but with what prospects we know not. I wrote to her without delay according to my purpose intimated to you, a letter of some length, in answer to one from her. Mrs. Madison wrote at the same time. I hope those letters, mine at least, reached her; not because it contained anything of much importance, but because it was dictated by the respect we feel for her fine genius and exalted benevolence. Her plan contemplated a provision for the expatriation of her Elèves, but without specifying it; from which I infer the difficulty felt in devising a satisfactory one. Could this part of the plan be ensured the other essential part, would come about of itself. Manumissions now more than keep pace with the outlets provided, and the increase of them is checked only by their remaining in the country. This obstacle removed and all others would yeild to the emancipating disposition. To say nothing of partial modes, what would be more simple, with the requisite grant of power to Congress, than to purchase all female infants at their birth, leaving them in the service of the holder to a reasonable age, on condition of their receiving an elementary education. The annual number of female births may be stated at twenty thousand, and the cost at less than one hundred dollars each, at the most; a sum which would not be felt by the nation, and be even within the compass of State resources. But no such effort would be listened to, whilst the impression remains, and it seems to be indelible, that the two races cannot co-exist, both being free & equal.

[1] She came to the United States in 1825 at Lafayette's suggestion.

The great sine qua non, therefore is some external asylum for the coloured race. In the mean time the taunts to which this misfortune exposes us in Europe are the more to be deplored, because it impairs the influence of our political example; tho' they come with an ill grace from the quarter most lavish of them, the quarter which obtruded the evil, and which has but lately become a penitent, under suspicious appearances. . . .

TO THOMAS COOPER.[1]

MONTPELLIER, Dec. 26, 1826.

DEAR SIR, . . . Have you ever adverted to the alledged minuteness of the Roman farms, & the impossibility of accounting for their support of a family. All the ancient authors, agricultural & Historical, speak of the ordinary size as not exceeding duo jugera, equal according to the ascertained measure, to about one & a quarter of our acres, & none of the modern writers, I have met with, question the statement. Neither Hume nor Wallace, tho' led to a critical investigation of it, in comparing the populousness of ancient & modern nations, notice the difficulty. Dixon too in his elaborate researches into ancient husbandry, if I do not misrecollect, starts no doubt on the subject. Now it is impossible that a family, say of six persons could procure from such a speck of earth, by any known mode of culture, a supply of food such as then used with the materials for clothing or a surplus from the soil that would purchase it, to say nothing

[1] From the original kindly loaned by Mrs. Sally Newman, "Hillton," Va.

of fuel and the wood necessary for the other wants of the farm. We hear much also of the plough & the oxen on the Roman farms. How were these fed? A yoke would devour more than the whole product.

Cincinnatus himself is reported to have owned but 8 jugera, if I mistake not, one half of which, he lost, by a suretyship. Even that aristocratic allowance is not free from the remarks here made. The subject is curious, and involves 3 questions, 1. Whether the size of the farm, tho' never called in question, has been rightly stated? 2. If rightly stated & no extraneous resources existed, how were the families subsisted? 3. If there were extraneous resources what were they? We read of no pastures or forests in common, and their warlike expeditions, tho' in the neighborhood, as it were, and carried on by the farmers themselves, could yield no adequate supplies to solve the problem.

The mail has furnished me with a copy of your Lectures on Civil Government, and on the Constitution of the U. S. I find in them much in which I concur; parts on which I might say non liquet, and others, from which I should dissent; but none, of which interesting views are not presented. What alone I mean to notice, is a passage in which you have been misled by the authorities before you, & by a misunderstanding of the term "national," used in the early proceedngs of the Convention 1787. Both Mr. Yates and Mr. Martin brought to the Convention, predispositions against its object, the

one from Maryland, representing the party of Mr. Chase opposed to federal restraints on State Legislation; the other from New York the party unwilling to lose the power over trade, through which the State levied a tribute on the consumption of its neighbours. Both of them left the Convention long before it completed its work, and appear to have reported in angry terms what they had observed with jaundiced eyes. Mr. Martin is said to have recanted at a later day, and Mr. Yates, to have changed his politics & joined the party adverse to that, which sent him to the Convention.

With respect to the term "national" as contradistinguished from the term "federal" it was not meant to express the extent of power, but the mode of its operation which was to be, not like the power of the old confederation operating on States but like that of ordinary government operating on individuals; and the substitution of "United States" for "National," noted on the journal was not designed to change the meaning of the latter, but to guard against a mistake or misrepresentation of what was intended. The term "national" was used in the original propositions offered on the part of the Virginia Deputies, not one of whom attached to it, any other meaning than that here explained. Mr. Randolph himself, the organ of the Deputation on the occasion, was a strenuous advocate for the federal quality of limited & specified powers; and finally refused to sign the Constitution, because its powers were not sufficiently limited and defined.

We feel great pleasure in inferring from your communication, that your health, so severely assailed at Richmond, has been effectually restored. With the best wishes for its continuance, and the addition of all other blessings, I renew to you the expression of my great esteem & friendly regards.

TO SAMUEL HARRISON SMITH.[1]

MONTPELLIER, Feb^{y} 2, 1827.

DEAR SIR I have received, with your favour of Jan^{y} 24, a copy of your biographical Memoir of Th^{s} Jefferson delivered before the Columbian Institute; and I can not return my thanks without congratulating the Institute, on its choice of the hand to which the preparation of the Memoir was assigned. The subject was worthy of the Scientific and patriotic Body which espoused it, and the manner in which it has been treated, worthy of the subject. The only blemishes to be noted on the face of the memoir are the specks, in which the partiality of the friend betrays itself towards one of the names occasionally mentioned.

I have great respect for your suggestion with respect to the season for making public what I have preserved of the proceedings of the Revolutionary Congress, and the General Convention of 1787. But I have not yet ceased to think that publications of them, posthumous to others as well as myself, may be most delicate, and most useful too, if to be

[1] From the original owned by the late J. Henley Smith, of Washington, D. C.

useful at all. As no personal or party views can then be imputed, they will be read with less of personal or party feelings, and consequently with whatever profit may be promised by them. It is true also that after a certain date, the older such things grow, the more they are relished as new; the distance of time like that of space from which they are received, giving them that attractive character.

It cannot be very long however before the living obstacles to the forthcomings in question will be removed. Of the members of Congress during the period embraced, the lamps of all are extinct, with the exception I believe of R^d^ Peters & myself, and of the signers of the Constitution of all but R. King, W^m^ Few & myself; and of the lamps still burning, none can now be far from the socket.

It will be long before this can be said of yours, & that which pairs with it; and I pray you both to be assured of the sincere wish, in which M^rs.^ M. joins me, that in the mean time every happiness may await you.

TO JONATHAN ELLIOT. MAD. MSS.

MONTPELLIER, Feb'y 14, 1827.

DEAR SIR I have just rec^d^ your letter of the 12th ins^t^., and with it a copy of the first Vol. of the Debates &c. of the State Conventions which decided on the constitution of the U. States. The Vol. appears a favorable specimen of the manner in which the work is to be executed.

The proceedings of those Assemblies however

defective they may be in some respects & inaccurate in others being highly interesting in a political as well as Historical view, a rescue of them from the increasing difficulty of procuring copies, & the possibility of their disappearance altogether, is among the cares which may reasonably be expected from the existing generation by those which are to follow. The obvious provision in the case is that of multiplying copies in individual hands, and in public depositories; and I wish you may find due encouragement in a task which will provide the means for both these safeguards.

I send you a copy as you request of what was published, and is in my possession, of the Debates in the Pennyslvania Convention. These being on one side only, it may be proper to search for the cotemporary publications on the other. I send also the proceedings of the *first* of the two N. Carolina conventions. If those of the second were ever published, no copy of them has come into my hands.

With friendly respect.

TO HENRY WHEATON. CHIC. HIST. SOC. MSS.

MONTP^{R}., Feb^{y}. 26 & 27 [1827].

D^{R} SIR Since I answered your letter of —— it has occurred that I should not shew a respect for your wishes if I failed to fulfil them by suggesting for your consideration the following topics, as far as they may fall within the range of your enlarged edition of the "Life of M^{r} Pinkney."

Without discussing the general character of the Treaty with G. B. in 1794, or wishing to revive animosities which

time has soothed to rest, it may be recollected that among the great merits claimed for the Treaty were the indemnity for spoliations on our commerce, and the privilege of trading with British India.

On the first plea of merit, it may be remarked that such was the structure of the article stipulating indemnity, that but for the powerful exertions of our commissioners particularly Mr. Pinkney, and finally, the turn of the die that gave them the choice of the Umpire, the Treaty would have failed on that great point. It may be said therefore to have provided for one half only of what was obtained, the chance being equal of losing or gaining the whole.

On the other plea it is to be remarked that the value of the privileged trade depended very materially on its being open to *indirect* as well as direct voyages to India. Yet in a case turning on this point, which was carried before the Court of King's Bench, the Chief Justice although he decided in our favour, declared at the same time his belief that the real intention of the negociators was otherwise, and his regret that the article happened to be so worded that the legal rules of interpretation constrained him to decide as he did. The twelve Judges confirmed the decision, presumably, *perhaps avowedly*, with the same impressions. My memory cannot refer to the source of my information on the subject. The whole case if not already known to you will doubtless be within your reach. Thus had fortune, or the fairness of the British Courts, failed us, the Treaty would have lost much of its favour with not a few of its warmest partizans.

In none of the Comments on the Declaration of the last war, has the more immediate impulse to it been sufficiently brought into view. This was the letter from Castlereagh to Foster, which according to the authority given, the latter put into the hands of the Secretary of State, to be read by him, and by the President also. In that letter it was distinctly & emphatically stated that the orders in Council, to which we had declared we would not submit, would not be

repealed, without a repeal of internal measures of France, which not violating any neutral right of the U. S. they had no right to call on France to repeal, and which of course could give to G. B. no imaginable right agst. the U. S. (see the passages in the War Message and in the Committee's Report in 1812 both founded on the letter without naming it). With this formal notice, no choice remained but between war and degradation, a degradation inviting fresh provocations & rendering war sooner or later inevitable.

It is worthy of particular remark that notwithstanding the peremptory declaration of the British Cabinet in the letter of Castlereagh, such was the distress of the British manufacturers, produced by our prohibititive and restrictive laws, as pressed on the House of Commons by Mr Broughton & others, that the orders in Council were soon after repealed, but not in time to prevent the effect of the declaration that they would not be repealed. The cause of the war lay therefore entirely on the British side. Had the repeal of the orders been substituted for the declaration that they would not be repealed, or had they been repealed but a few weeks sooner, our declaration of war as proceeding from that cause would have been stayed, and negociations on the subject of improvements, the other great cause, would have been pursued with fresh vigor & hopes, under the auspices of success in the case of the orders in council.

The Declaration of War has been charged by G. B. & her partizans with being made in subserviency to the views of Napoleon. The charge is as foolish as it is false. If the war coincided with the views of the Enemy of G. B. and was favored by his operations against her, that assuredly could be no sound objection to the time chosen for extorting justice from her. On the contrary, the co-incidence, tho' it happened not to be the moving consideration, would have been a rational one; especially as it is not pretended that the U. S. acted in concert with that Chief, or precluded themselves from making peace without any understanding with him; or even from

making war on France, in the event of peace with her enemy, and her continued violation of our neutral rights. It was a fair calculation, indeed, when war became unavoidable, or rather after it had commenced, that Napoleon whether successful or not agst Russia, would find full employment for her and her associates, G. B. included; and that it would be required of G. B. by all the powers with whom she was leagued, that she should not divert any part of her resources from the common defence to a war with the U. S. having no adequate object, or rather having objects adverse to the maritime doctrines and interests of every nation combined with her. Had the French Emperor not been broken down as he was, to a degree at variance with all human probability, and which no human sagacity could anticipate, can it be doubted that G. B. would have been constrained by her own situation and the demands of her allies, to listen to our reasonable terms of reconciliation. The moment chosen for the war would therefore have been well chosen if chosen with a reference to the French expedition agst Russia; and although not so chosen, the coincidence between the war & the expedition promised at the time to be as favorable as it was fortuitous.

But the war was commenced without due preparation: this is another charge. Preparations in all such cases are comparative. The question to be decided is whether the adversary was better prepared than we were; whether delay on our side, after the approach of war would be foreseen on the other, would have made the comparative preparations better for us. As the main theatre of the war was to be in our neighbourhood, and the augmented preparations of the enemy were to be beyond the Atlantic, promptitude of attack was the evident policy of the U. S. It was in fact not the suddenness of the war as an Executive policy, but the tardiness of the Legislative provisions, which gave whatever colour existed for the charge in question. The recommendation of military preparations went from the Executive on the 5th.

day of November; and so impressed was that Department of the Government with the advantage of dispatch in the measures to be adopted by Congress, that the Recommendation as was known contemplated a force of a kind and extent only which it was presumed might be made ready within the requisite period. Unfortunately this consideration had not its desired effect on the proceedings in Congress. The laws passed on the subject were delayed, that for filling up the peace establish till Decr 24, and that for the new army to be raised till Jany 14 and such were the extent and conditions prescribed for the latter, that it could scarcely under any circumstances and by no possibility under the circumstances existing, be forthcoming within the critical season. It may be safely affirmed that the force contemplated by the Executive if brought into the field as soon as it might have been would have been far more adequate to its object than that enacted by the Legislature could have been if brought into the field at the later day required for the purpose. When the time arrived for appointing such a catalogue of officers very few possessing a knowledge of military duty, and for enlisting so great a number of men for the repulsive term of five years and without the possibility of a prompt distribution in the midst of winter throughout the union of the necessary equipments & the usual attractions to the recruiting standards, the difference between the course recommended & that pursued was felt in its distressing force.

The Journals of Congress will shew that the Bills which passed into laws were not even reported till the [14th] of [April] by a Committee which was appointed on the [12th] of [November], a tardiness as strange in its appearance as it was painful in its consequences. Yet with all the disadvantages under which hostilities were commenced, their progress would have been very different, under a proper conduct of the initiative expedition into Upper Canada. The individual at the head of it had been pointed out for the service by very

obvious considerations. He had acquired during the war of the Revolution the reputation of a brave & valuable officer: He was of course an experienced one: He had been long the chief magistrate in the quarter contiguous to the Theatre of his projected operation; with the best opportunities of being acquainted with the population and localities on the hostile as well as his own side of the dividing straight: He had also been the Superintendent of our affairs with the Indian tribes holding intercourse with that district of country; a trust which afforded him all the ordinary means of understanding, conciliating, and managing their dispositions. With such qualifications and advantages which seemed to give him a claim above all others to the station assigned to him, he sunk before obstacles at which not an officer near him would have paused; and threw away an entire army, in the moment of entering a career of success, which would have made the war as prosperous in its early stages, and promising in its subsequent course as it was rendered by that disaster oppressive to our resources, and flattering to the hopes of the enemy. By the surrender of Gen! Hull the people of Canada, not indisposed to favor us, were turned against us; the Indians were thrown into the service of the enemy; the expence & delay of a new armament were incurred; the western militia & volunteers were withheld from offensive co-operation with the troops elsewhere by the necessity of defending their own frontiers and families agst incursions of the Savages; and a general damp spread over the face of our affairs. What a contrast would the success so easy at the outset of the war have presented! A triumphant army would have seized on Upper Canada and hastened to join the armies at the points below; the important command of Lake Erie would have fallen to us of course; the Indians would have been neutral or submissive to our will; the general spirit of the country would have been kindled into enthusiasm; enlistments would have been accelerated; volunteers would have stepped forward with redoubled confidence & alacrity; and what is not of

small moment, the intrigues of the disaffected would have been smothered in their embrio state.[1]

But in spite of the early frowns of fortune, the war would have pressed with a small portion of its weight but for the great military Revolution in Europe, the most improbable of

[1] To Henry Lee, February, 1827, Madison wrote:

"The plan in question embraced—1. An expedition into Lake Huron with 4 or 5 vessels, & 800 or 1,000 men, to obtain possession of Mackinaw & S^{t} Josephs. 2. An expedition with the forces under General Brown, to Burlington Heights preparatory to further operations for reducing the Peninsula; the expedition to depend on Chauncey's getting the command of Lake Ontario without which supplies could not be secured. 3. the building of 14 or 15 armed boats at Sacket's Harbour, so to command the S^{t} Lawrence under the protection of posts to be supplied from Izard's command, as to intercept the communication between Montreal & Kingston. 4. The main force under Izard to make demonstrations towards Montreal, in order to divert the Enemy from operations westward, and afford the chance of compelling Prevost to fight disadvantageously, or break up his connection with Lake Champlaine.

"I pass to the reference you make to certain appointments both for the army and for the Cabinet. Selections for office, always liable to error was particularly so for military command at the commencement of the late war. The survivors of the Revolutionary band who alone had been instructed by experience in the field were but few; and of those several of the most distinguished, were disqualified by age or infirmities, or precluded by foreknown objections in the advisory Branch of the appointing Department. This last cause deprived the army of services which would have been very acceptable to the nominating Branch. Among those who had acquired a mere disciplinary experience, no sufficient criterion of military capacity existed; and of course they had to undergo tests of another sort, before they were marked out for high military trusts.

"That the appointment of Hull was unfortunate, was but too soon made certain. Yet he was not only recommended from respectable quarters, but by his ostensible fitness also. He was a man of good understanding. He had served with reputation, and even some *eclât* in the Revolutionary Army; He had been the Gov^{r} at Detroit, and could not but be acquainted with the population & localities on the hostile as well as on his own side of the boundary; And he had been the superintendant of our Affairs with the Indians, a knowledge of which was of much importance. These advantages seemed to give

contingencies, which turned upon us such a body of veteran troops, enured to combat and flushed with victory. Happily this occurrence, so menacing in its aspect, led to exploits which gained for the arms of our Country a reputation in-

him not only a preference, but an appropriateness for his trust. They were nevertheless fallacious; and it is not unworthy of recollection, that after the disaster which proved it, some who had been most warm in his recommendation, were most ready to condemn the confidence put in him.

"The appointment of Gen[l]. Dearborn is also very unfavorably noticed. To say nothing of his acknowledged bravery & firmness, his military experience & local knowledge acquired during the Revolutionary war, had their value. And he had administered the Department of War for 8 years, to the satisfaction of the then President who thought well not only of his specific qualifications; but generally of his sound and practical judgment. To these considerations were added a public standing calculated to repress jealousies in others, not easy to be guarded ag[s].[t] in such cases, and always of the worst tendency; It may well be questioned, whether any substituted appointment would at the time have been more satisfactory.

"The advanced position in the service, given to General Smyth was much to be regretted. Some of the circumstances which led to it were specious, and the scale & cultivation of his understanding very respectable, but his talent for military command was equally mistaken by himself, and by his friends.

"Before I advert to your review of Cabinet appointments, I must allude to the field of choice *as narrowed* by considerations never to be wholly disregarded. Besides the more essential requisites in the candidate, an eye must be had to his political principles and connexions, his personal temper and habits, his relations of feelings towards those with whom he is to be associated; and the quarter of the Union to which he belongs. These considerations, the last as little as any are not to be disregarded, but in cases where qualifications of a transcendant order, designate individuals, and silence the patrons of competitors whilst they satisfy the public opinion. Add to the whole, the necessary sanction of the Senate; and what may also be refused, the necessary consent of the most eligible individual: You are probably very little aware of the *number of refusals* experienced during the period to which your observations apply.

"I must be allowed to express my surprize at the unfavorable view taken of the appointment of Mr. Jones. I do not hesitate to pronounce him the fittest minister who had ever been charged with the Navy

valuable as a guaranty against future aggressions, or a pledge for triumphs over them.

There is a circumstance relating to the Treaty of Ghent which seems to have escaped the notice to which it is entitled.

Department. With a strong mind well stored with the requisite knowledge, he possessed great energy of character and indefatigable application to business. I cannot doubt that the evidence of his real capacity, his appropriate acquirements, and his effective exertions, in a most arduous service, & the most trying scenes, now to be found on the files of the Department, as well as my own, would reverse the opinion which seems to have been formed of him. Nor in doing him justice ought it to be omitted that he had on his hands, the Treasury as well as Navy Department, at a time when both called for unusual attention, and that he did not shrink from the former, for which he proved himself qualified, till the double burden became evidently insupportable.

"Mr. Campbell was the only member of the Cabinet from the West whose claims to a representation in it, were not unworthy of attention under existing circumstances. It was not indeed the quarter most likely to furnish fiscal qualifications; but it is certain that he had turned his thoughts that way, whilst in public life more than appears to have been generally known. He was, moreover, a man of sound sense, of pure integrity, and of great application. He held the office at a period when the difficulties were of a sort scarcely manageable by the ablest hands, and *when the ablest hands were least willing to encounter them.* It happened also that soon after he entered on his task, his ill health commenced, & continued to increase till it compelled him to leave the department.

"Of Mr. Crowninshield it may be said without claiming too much for him, that he had not only rec^{d} public testimonies of respectability in a quarter of the Union feeling a deep interest in the Department to which he was called, but added to a stock of practical good sense, a useful stock of nautical experience and information; and an accommodating disposition particularly valuable in the head of that Department, since the auxiliary establishment of the Navy Board, on which the labouring oar now devolves. Superior talents without such a disposition, would not suit the delicacy of the legal relations between the Secretary & the Board, and the danger of collisions of very embarrassing tendency.

"As you have made no reference to Doc^{r} Eustis, I ought perhaps to observe a like silence. But having gone so far on the occasion, I am tempted to do him the justice of saying that he was an acceptable

After the close of the British war on the Continent of Europe, and during the negociations for closing it with us, the question arose in the House of Commons, whether the war taxes were to cease with the European war, or to be continued on account of the war with the U. S.; the British Minister having given an assurance previous to the latter that those obnoxious taxes should be repealed on the return of peace. The question was put home to M. Vansittart the Exchequer Minister, who well knowing that the nation would not support at that oppressive expence a war reduced as the objects of it had become, shunned an answer, got the Parliament prorogued till the month of February, and in the meantime the Treaty was concluded at Ghent. I have not the means of refreshing or correcting my memory, but believe you will find on consulting the parliamentary annals of that period that what is stated is substantially true.

Permit me to repeat generally that these paragraphs are intended for your *examination*, as well as consideration. They may be neither free from errors, nor have a sufficient affinity to your biographical text; and if admitted into it, will need from your pen both developments and adaptations making them your own. Whether admissible or not, they will prove the sincerity of my promise to suggest anything that might

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member of the Cabinet, that he possessed an accomplished mind, a useful knowledge on military subjects derived from his connexion with the Revolutionary army, and a vigilant superintendance of subordinate agents; and that his retreat from his station, proceeded from causes not inconsistent with these endowments. With the overload of duties required by military preparations on the great scale enjoined by law, and the refusal to him of assistants asked for who were ridiculed as crutches for official infirmity, no minister could have sustained himself; unless in the enjoyment of an implicit confidence on the part of the public, ready to account for every failure, without an impeachment of his official competency. In ordinary times Eustis w^{d}. have satisfied public expectation, & even in those he had to struggle with, the result w^{d}. have been very different with organizations for the War Dep^{t} equivalent to what has been found so useful in a time of peace for an army reduced to so small an establishment.—*Mad. MSS.*

occur to my thoughts. And that I may not be without some proofs also that I have not forgotten the other promise of whatever might be caught by my eye, I inclose a smal. pamphlet published within the period of Mr Pinkney's pu lic life, and throwing light on the then state of parties in the U. States. It was drawn up at the pressing instances of my political friends, at the end of a fatiguing session of Congress, and under a great impatience to be with my family on the road homeward but with the advantage of having the whole subject fresh in my memory and familiar to my reflections. The tone pervading it will be explained if not excused by the epoch which gave birth to it.

TO J. K. PAULDING. MAD. MSS.

MONTPR, Mar. 10, 1827

DEAR SIR, I have recd your favor of Febv 28, and read the pamphlet under the same cover. It is a powerful and a piercing lesson on the subject which it exposes. I was not before aware of the abuses committed by the Law-makers or the law-breakers of your State. The picture you give of both, tho' intended for N. York alone, is a likeness in some degree of what has occurred elsewhere, and I wish it could be in the hands of the Legislators, or, still better, of their Constituents everywhere. Incorporated Companies with proper limitations and guards, may in particular cases, be useful; but they are at best a necessary evil only. Monopolies and perpetuities are objects of just abhorrence. The former are unjust to the existing, the latter usurpations on the rights of future generations. Is it not strange that the Law, which will not permit

an individual to bequeath his property to the descendants of his own loins for more than a short and a strictly defined term, should authorize an associated few to entail perpetual and indefeasible appropriations; and that not only to objects visible and tangible, but to particular opinions, consisting, sometimes of the most metaphysical niceties; as is the case with Ecclesiastical Corporations.

With regard to Banks, they have taken too deep and wide a root in social transactions to be got rid of altogether, if that were desirable. In providing a convenient substitute, to a certain extent, for the metallic currency, and a fund of credit which prudence may turn to good account, they have a hold on public opinion, which alone would make it expedient to aim rather at the improvement than the suppression of them. As now generally constituted their advantages whatever they be, are outweighed by the excesses of their paper emissions, and by the partialities and corruption with which they are administered.

What would be the operation of a Bank so modified that the Subscribers should be individually liable pro tanto and pro rata for its obligations, and that the Directors, with adequate salaries paid out of the profits of the Institution should be prohibited from holding any interest in or having any dealings whatever with, the Bank, and be bound moreover by the usual solemnity, to administer their trust with fidelity and impartiality? The idea of some such a modification occurred to me formerly, when

the subject engaged more of my attention than it has latterly done. But there was then, as there probably is now, little prospect that such an innovation would be viewed with public favor if thought by better judges to have pretensions to it. . . .

TO MARTIN VAN BUREN. MAD. MSS.

MONTPELLIER, Mar. 13, 1827.

DEAR SIR, I have rec^{d} your favor of the 3d inst., covering the Report to the Senate on the "Georgia Business."[1] The Report is drawn with the ability which might be expected from the Committee making it. The views which it presents on the subject cannot certainly be complained of by Georgia. The occurrence has been a most painful one, whether regarded in its tendency abroad, or at home. And God grant that it may have a termination at once healing & preventive.

If it be understood that our political System contains no provision for deciding questions between the Union & its members, but that of negotiation, this failing, but that of war, as between separate & Independent Powers, no time ought to be lost in supplying, by some mode or other, the awful omission. What has been called a Government is on that supposition a mere league only; a league with too many Parties, to be uniformly observed, or effectively maintained.

You did well I think in postponing the attempt to amend the phraseology of the Constitution on a

[1] The report was submitted by Thomas H. Benton, March 1.

point essentially affecting its operative character. The state of the political atmosphere did not promise that discussion and decision on the pure merits of such an amendment, which ought to be desired.

Be pleased to accept with my cordial salutation the renewed expression of my great esteem

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TO JOSEPH C. CABELL. MAD. MSS.

MONTPELLIER, Mar. 22d, 1827

MY DEAR SIR, . . . I had noticed the loss of the proposed amendment to the Resolution on the subject of the Tariff, and the shaft levelled at yourself. Intemperance in politics is bad enou'; Intolerance has no excuse. The extreme to which the Resolution goes in declaring the protecting duty as it is called unconstitutional is deeply to be regretted.[1] It is a ground which cannot be maintained, on which the State will probably stand alone, and which by lessening the confidence of other States in the wisdom of its Councils, must impede the progress of its sounder doctrines. In compliance with your request I offer a few hasty remarks on topics and sources of information which occur to me.

1. The meaning of the Power to regulate commerce is to be sought in the general use of the phrase, in other words, in the

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[1] "You will perceive that the Genl. Assembly has again pronounced the opinion that Duties for the protection of domestic manufactures are unconstitutional. I made an effort to amend the resolution in the Senate so as to declare the increased duties of 1824 impolitic and unwise, but lost the motion by a vote of 14 to 8. . . . In the debate in the House of Delegates, Genl. Taylor quoted the opinion of Mr. Jefferson as expressed in his messages to Congress. Mr. Giles declared in reply that he knew that Mr. Jefferson had changed his opinion as to the Constitutionality of protecting Duties, & referred to a private letter which he had received from him. I have not seen the letter myself: but I believe a letter has been shewn to some of the members." Cabell to Madison, Richmond, March 12, 1827.—*Mad. MSS.* See Jefferson to Giles, December 25, 1825. (*Writings*, Ford, xii., 424, Federal Edition.)

objects generally understood to be embraced by the power, when it was inserted in the Constitution.

2. The power has been applied in the form of a tariff, to the encouraging of particular domestic occupations by every existing Commercial Nation.

3. It has been so used & applied particularly & systematically by G. Britain whose commercial vocabulary is the Parent of ours.

4. The inefficacy of the power in relation to manufactures as well as to other objects, when exercised by the States separately, was among the arguments & inducements for revising the Old Confederation, and transferring the power from the States to the Gov^{t} of the U. S. Nor can it be supposed that the States actually engaged in certain branches of Manufactures, and foreseeing an increase of them, would have surrendered the whole power [over] commerce to the General Gov^{t} unless expected to be more effectual for that as well as other purposes, in that depositary, than in their own hands. Nor can it be supposed that *any of the States*, meant to *annihilate* such a power, and thereby disarm the Nation from protecting occupations & establishments, important to its defence & independence, agst the subversive policy of foreign Rivals or Enemies. To say that the States may respectively encourage their own manufactures, and may therefore have looked to that resource when the Constitution was formed, is by no means satisfactory. They could not protect them by an impost, if the power of collecting one had been reserved, a *partial* one having been found impracticable; so, also as to a prohibitory regulation. Nor can they do it by an excise on foreign articles, for the same reason, the trade being necessarily open with other States which might concur in the plan. They could only do it by a *bounty*, and that bounty procured *by a direct tax*, a tax unpopular for any purpose, and obviously inadmissible for that. Such a state of things could never have been in contemplation when the Constitution was formed.

5. The Printed Journal of the Convention of 1787 will *probably* shew positively or negatively that the Commercial power given to Congress embraced the object in question.

6. The proceedings of the State Conventions may also deserve attention.

7. The proceedings & debates of the first Congress under the present Constitution, will shew that the power was generally, *perhaps* universally, regarded as indisputable.

8. Throughout the succeeding Congresses, till a very late date, the power over commerce has been exercised or admitted, so as to bear on internal objects of utility or policy, without a reference to revenue. The University of Virginia very lately had the benefit of it in a case where revenue was relinquished; a case not questioned, if liable to be so. The Virginia Resolutions, as they have been called, which were proposed in Congress in 1793–4, and approved throughout the State, may perhaps furnish examples.

9. Every President from Gen! W. to Mr. J. Q. Adams inclusive has recognised the power of a tariff in favor of Manufactures, without indicating a doubt, or that a doubt existed anywhere.

10. Virginia appears to be the only State that now denies, or ever did deny the power; nor are there perhaps more than a very few individuals, if a single one, in the State who will not admit the power in favor of internal fabrics or productions necessary for public defence on the water or the land. To bring the protecting duty in those cases, within the war power would require a greater latitude of construction, than to refer them to the power of regulating trade.

11. A construction of the Constitution practised upon or acknowledged for a period, of nearly forty years, has received a national sanction not to be reversed, but by an evidence at least equivalent to the National will. If every new Congress were to disregard a meaning of the instrument uniformly sustained by their predecessors, for such a period there would be less stability in that fundamental law, than is

required for the public good, in the ordinary expositions of law. And the case of the Chancellor's foot, as a substitute for an established measure, would illustrate the greater as well as the lesser evil of uncertainty & mutability.

12. In expounding the Constitution, it is as essential as it is obvious, that the distinction should be kept in view, between the usurpation, and the abuse of a power. That a Tariff for the encouragement of Manufactures may be abused by its excess, by its partiality, or by a noxious selection of its objects, is certain. But so may the exercise of every constitutional power; more especially that of imposing indirect taxes, though limited to the object of revenue. And the abuse cannot be regarded as a breach of the fundamental compact, till it reaches a degree of oppression, so iniquitous and intolerable as to justify civil war, or disunion pregnant with wars, then to be foreign ones. This distinction may be a key to the language of Mr J——n, in the letter you alluded to. It is known that he felt and expressed strongly, his disapprobation of the existing Tariff and its threatened increase.

13. If mere *inequality*, in imposing taxes, or in other Legislative Acts, be synonymous with *unconstitutionality*, is there a State in the Union whose constitution would be safe? Complaints of such abuses are heard in every Legislature, at every session; and where is there more of them than in Virginia, or of pretext for them than is furnished by the diversity of her local & other circumstances; to say nothing of her constitution itself, which happens to divide so unequally the very power of making laws?

I wish I could aid the researches to which some of the above paragraphs may lead. But it would not be in my power, if I had at my command, more than I have, the means of doing it. It is a satisfaction to know that the task, if thought worth the trouble, will be in better hands. . . .

TO NICHOLAS BIDDLE. MAD. MSS.

MONTP^{R}, May 17, 1827

D^{R} SIR I thank you very sincerely for the copy of your "Eulogium on Th^{s} Jefferson." I have derived from it the peculiar pleasure, which so happy a portraiture could not fail to afford one, who intimately knew, & feelingly admired, the genius, the learning, the devotion to public liberty and the many private virtues of the distinguished original. Ably & eloquently as the subject has been handled, all must see that it had not been exhausted; and you are, I am sure, alone in regretting that what remained for some other hand, fell into yours.

Pardon me for remarking that you have been led into an error, in the notice you take of the Revised Code provided for, by the first Independent Legislature of Virg^{a}. The Revisors, were in number not three but five, viz Mr. Jefferson, Mr. Pendleton, Mr. Wythe, Col. Geo. Mason & Col. Th^{s} L. Lee. The last died & Col. Mason resigned; but not before they had joined in a Consultative meeting. In the distribution of the work among the others Mr. W. was charged with the British Statutes, Mr. P. with the Colonial laws, & Mr. J. with certain parts of the com̃on Law, and the new laws called for by the new State of the Country.

The portion executed by Mr. Jefferson was perhaps the severest of his many intellectual labours. The entire report, as a Model of technical precision, and perspicuous brevity and particularly as comprising samples of the philosophical spirit which ennobled

his Legislative policy, may, in spite of its Beccarian Illusions, be worthy of a place among the collections of the Society of which he was once the Presiding Member; and if a Copy be not already there, it will be a pleasure to me to furnish one. . . .

TO THOMAS J. WHARTON. MAD. MSS.

MONTP^{R}, Aug. , 1827.

DEAR SIR I have duly rec^{d} the copy of your Oration on the 4th of July last. In making my acknowledgments, with the passage under my eye, ascribing to me "the first public proposal for the meeting of the Convention to which we are indebted for our present Constitution," it may be proper to state in a few words the part I had in bringing about that event.

Having witnessed, as a member of the Revolutionary Congress, the inadequacy of the Powers conferred by the "Articles of Confederation," and having become, after the expiration of my term of service there, a member of the Legislature of Virginia, I felt it to be my duty to spare no efforts to impress on that Body the alarming condition of the U. S. proceeding from that cause, and the evils threatened by delay, in applying a remedy. With this view, propositions were made vesting in Congress the necessary powers to regulate trade then suffering under the monopolising policy abroad, and State collisions at home, and to draw from that source the convenient revenue it was capable of yielding. The

propositions tho' rec^{d} with favorable attention, and at one moment agreed to in a crippled form, were finally frustrated or, rather abandoned. Such however were the impressions which the public discussions had made, that an alternative proposition which had been kept in reserve, being seasonably brought forward by a highly respected member, who having long served in the State Councils without participating in the federal had more the ear of the Legislature on that account, was adopted with little opposition. The proposition invited the other States to concur with Virginia in a Convention of Deputies commissioned to devise & report a uniform system of commercial regulations. Commissioners on the part of the State were at the same time appointed myself of the number. The Convention proposed took place at Annapolis in August, 1786. Being however very partially attended, and it appearing to the members that a rapid progress, aided by the experiment on foot, had been made in ripening the public mind for a radical reform of the Federal polity, they determined to waive the object for which they were appointed, and recommend a Convention with enlarged Powers to be held, the year following in the city of Phila^{da}. The Legislature of Virg^{a} happened to be the first that *acted on* the recommendation, and being a member, the only one of the attending Commissioners at Annapolis, who was so, my best exertions were used in promoting a compliance with it, and in giving to the example the most conciliating form, & all the weight

that could be derived from a list of deputies having the name of Washington at its head.

In what is here said of the agency of Virginia and of myself particularly, it is to be understood that no comparison is intended that can derogate from what occurred elsewhere, and may, of course, be less known to me than what is here stated.

I pray you, Sir, to pardon this intrusive explanation, with which I tender you my respectful salutations.

TO JONATHAN ELLIOT. MAD. MSS.

MONTP^{R}, NOV^{r}. , 1827.

D^{R} SIR, I have rec^{d} your letter of the 12th, in which you observe that you are committing to the Press the 2d Vol of Debates in the State Conventions on the question of adopting the federal Constn; that the Vol will include the debates of the Virg^{a} Convention, and you request of me a correct Copy of the part I bore in them.

On turning to the several pages containing it, in the 2d & 3d Vol^{s} of the Original Edition, (the 1st not being at hand,) I find passages, some appearing to be defective, others obscure, if not unintelligible, others again which must be more or less erroneous. These flaws in the Report of my observations may doubtless have been occasioned in part by want of care in expressing them; but probably in part also by a feebleness of voice caused by an imperfect recovery from a fit of illness, or by a relaxed attention in the Stenographer himself incident to long &

fatiguing discussions, of his general intelligence & intentional fidelity, no doubt has been suggested.

But in whatever manner the faulty passages are to be accounted for, it might not be safe, nor deemed fair, after a lapse of 40 years, lacking a few months, and without having in the meantime ever revised them, to undertake to make them what it might be believed they ought to be. If I did not confound subsequent ideas, and varied expressions, with the real ones, I might be supposed to do so.

These considerations induce me to leave my share of those debates, as they now stand in print; not doubting that marks of incorrectness on the face of them will save me from an undue degree of responsibility.

I have never seen nor heard of any publication of the Debates in the 2d Convention of N. Carolina, and think it probable that if taken down, they never went to the Press.

I am glad to find you are encouraged to proceed in your plan of collecting & republishing in a convenient form, the proceedings of the State Conventions as far as they are to be obtained; and with my best wishes that you may be duly rewarded for the laudable undertaking, I tender you my friendly respects.

Mrs. Madison desires me to express her acknowledgments for the little volume,[1] you politely sent her.

[1] Wanderings in Washington.—*Madison's Note.*

TO GEORGE MASON. VA. HIST. SOC. MSS.

MONTPELLIER, Dec. 29, 1827.

DEAR SIR:—I am much obliged by your polite attention in sending me the Copies of the Remonstrance in behalf of Religious Liberty which with your letter of the 10th came duly to hand. I had supposed they were to be preserved at the office which printed them and referred M^rs^ Cutts to that source. Her failure there occasioned the trouble you so kindly assumed. I wished a few copies on account of applications now & then made to me and I preferred the Edition of which you had sent me a sample, as being in the simplest of forms, and for the further reason that the pamphlet edition had inserted in the caption, the term "toleration" not in the Article declaring the Right. The term being of familiar use in the English Code had been admitted into the original Draught of the Declaration of Rights but on a suggestion from myself was readily exchanged for the phraseology excluding it.[1] The Biographical tribute you meditate is justly due to the merits of your ancestor Col. Geo. Mason. It is to be regretted that highly distinguished as he was the memorials of them we record, or perhaps otherwise attainable are more scanty than of many of his contemporaries far inferior to him in intellectual powers and in public services. It would afford me much pleasure to be a tributary to your undertaking; but tho' I had the advantage of being on the list of his personal friends and in several instances of being associated with him in public life I can add little for the pages of your work.

My first acquaintance of him was in the convention of Va. in 1776 which instructed her delegates to propose in Congress a Declaration of Independence and which formed the Declaration of rights and the Constitution for the State. Being young and inexperienced I had of course but little agency in those proceedings. I retain however a perfect impression that he

[1] *Ante*, Vol. I., p. 32.

was a leading champion for the Instruction; that he was the author of the Declaration as originally drawn and with very slight variations adopted; and that he was the Master Builder of the Constitution & its main expositor & supporter throughout the discussions which ended in the establishment. How far he may have approved it in all its features as established I am not able to say; and it is the more difficult now to discern unless the private papers left by him should give the information as at that day no debates were taken down and as the explanatory votes, if such there were, may have occurred in Committee of whole only, and of course not appear in the Journals. I have found among my papers a printed copy of the Constitution in one of its stages, which compared with the Instrument finally adopted, shews some of the changes it underwent, but in no instance at whose suggestion or by whose votes.

I have also a printed copy of a sketched constitution which appears to have been the primitive draft on the subject. It is so different in several respects from the other copy in point & from the Constitution finally passed that it may be more than doubted whether it was from the hand of your grandfather. There is a tradition that it was from that of Meriwether Smith whose surviving papers if to be found among his descendants might throw light on the question. I ought to be less at a loss than I am in speaking of these circumstances having been myself an added member to the committee. But such has been the lapse of time that without any notes of what passed and with the many intervening scenes absorbing my attention my memory can not do justice to my wishes. Your grandfather as the Journals shew was at a later day added to the committee being doubtless absent when it was appointed or he never would have been overlooked.

The public situation on which I had the best opportunity of being acquainted with the genius, the opinions & the public labours of your grandfather was that of our co-service in the Convention of 1787 which formed the Constitution

of the U. S. The objections which led him to withhold his name from it have been explained by himself. But none who differed from him on some points will deny that he sustained throughout the proceedings of the body the high character of a powerful Reasoner, a profound Statesman and a devoted Republican.

My private intercourse with him was chiefly on occasional visits to Gunston when journeying to & fro from the North, in which his conversations were always a feast to me. But tho' in a high degree such, my recollection after so long an interval can not particularize them in a form adapted to biographical use. I hope others of his friends still living who enjoyed much more of his Society will be able to do more justice to the fund of instructive observations & interesting anecdotes for which he was celebrated. . . .

TO JARED SPARKS. MAD. MSS.

MONTPELLIER, January 5, 1828.

DEAR SIR, I received two days ago your favor of December 29. That of August 25 came also safe to hand. I did not acknowledge it, because I expected soon to have an occasion for doing it on the receipt of the letters since put into the hands of Col. Storrow. Having heard nothing from him on the subject, I conclude that he retains them for a better conveyance than he had found; although I am not without apprehension of some casualty to the packet on the way.

For a reason formerly glanced at, namely, the advantage of having before me the whole of my correspondence with General Washington, in estimating his purpose as to particular portions of it, I did not make use of the suggested opportunity to

Washington by my neighbour Mr. P. P. Barbour. I shall now conform to your last suggestion, and await your return from Europe. In the mean time I thank you for your promise to send me copies of letters from Gen! Washington to me, which are missing on my files. This I hope can be done before your departure.

It would afford me particular pleasure to favour in any way, your interesting objects in visiting Europe, and especially by letters to correspondents who could be of service to you. It happens however that I have not a single one either in Great Britain or Holland. Our Consul Mr. Maury at Liverpool, is an old and intimate friend, and if you intend to take that place in your route to London, and you think it worth while, I shall gladly give you a line of introduction to his hospitality, and such little services as he may be able to render. In France, you will doubtless be able to obtain through Gen! Lafayette alone, every proper key to the documentary treasures attainable there; besides what his own files may furnish.

I have given a hasty look at Gen! Washington's letters, with an eye to your request for such autographic specimens as might be proper for depositories in Europe. As letters of little significancy in themselves, might not be worthy of such a use, my attention was chiefly directed to those of high character; and I am not sure that there is one such, which is not of too confidential a stamp, or which does not contain personalities too delicate, for the purpose in

question. You will be aware also that some of his letters, especially when written in haste, shew specks of inaccuracy which though not derogating at all from the greatness of his character, might disappoint readers abroad accustomed to regard him as a model even in the performances of the pen. It is to be presumed that his correspondence with me, as with a few others, has more references to subjects and occasions involving confidential traits, than his correspondence with those less intimate with him. I will again turn to his letters and see whether there be any free from the objection hinted at.

You wish me to say whether I believe "that at the beginning of the Revolution, or at the assembling of the first Congress, the leaders of that day were resolved on Independence?" I readily express my entire belief that they were not, tho' I must admit that my means of information were more limited than may have been the case with others still living to answer the enquiry. My first entrance on public life was in May, 1776, when I became a member of the Convention in Virginia, which instructed her delegates in Congress to propose the Declaration of Independence. Previous to that date, I was not in sufficient communication with any under the denomination of leaders, to learn their sentiments or views on the cardinal subject. I can only say therefore, that so far as ever came to my knowledge, no one of them ever avowed, or was understood to entertain a pursuit of independence at the assembling of the first Congress, or for a very considerable period

thereafter. It has always been my impression that a re-establishment of the Colonial relations to the parent country previous to the Controversy, was the real object of every class of people, till despair of obtaining it, and the exasperating effects of the war, and the manner of conducting it, prepared the minds of all for the event declared on the 4th of July, 1776, as preferable with all its difficulties and perils, to the alternative of submission to a claim of power, at once external, unlimited, irresponsible, and under every temptation to abuse, from interest, ambition, & revenge. If there were individuals who originally aimed at Independence, their views must have been confined to their own bosoms or to a very confidential circle.

Allow me Sir to express anew, my best wishes for a success in your historical plan commensurate with its extent and importance; and my disposition to contribute such mites towards it as may be in my power.

Do me the favour to say when and from what fort you propose to embark. May I venture to add a request of the result of your inquiry at Philadelphia on the subject of the paper in the hands of Claypole, as far as it may be proper to disclose it, and trust it to the mail.

With great esteem & friendly respects.

TO THOMAS S. GRIMKE MAD. MSS.

MONTP^{R}, Jan^{y} 15, 1828

I return my thanks, Sir for a copy of a Report on the question of reducing the Laws of S. Carolina to the form of a Code.

The Report, presents certainly very able & interesting views of the subject, and can leave no doubt of the practicability & utility of such a digest of the Statute law as would prune it of its redundancies of every sort, clear it of its obscurities, and introduce whatever changes in its provisions might improve its general character. Within a certain extent, the remark is applicable to the unwritten law also, which must be susceptible of many improvements not yet made by Legislative enactments. How far a reduction of the entire body of unwritten Law into a systematic text be practicable & eligible, is the only question on which doubts can be entertained. And here there seems to be no insuperable difficulty, in classifying & defining every portion of that law, provided the terms employed be at once sufficiently general & sufficiently technical; the first requisite, avoiding details too voluminous, the last avoiding new terms, always liable more or less till made technical by practice, to discordant interpretations. It has been observed that in carrying into effect the several codified digests not excepting the Napoleon, the most distinguished of them, the former resort in the Tribunals has been necessarily continued to the course of precedents and other recognized authorities. What indeed would the Justinian Code be without the explanatory comments & decrees which make a part of the Civil Law?

One of the earliest acts of the Virginia Legislature, after the State became Independent provided for a revisal of the Laws in force, with a view to give it a

systematic character accommodated to the Republican form of Gov^t^ and a meliorated spirit of Legislation. The task was committed to five Comissioners, and executed by three of them, Mr. Jefferson, Mr. Wythe & Mr. Pendleton. In a consultative meeting of the whole number, the question was discussed whether the Common Law at large, or such parts only as were to be changed, should be reduced to a text law. It was decided by a majority that an attempt to embrace the whole was unadvisable; and the work, as executed, was accordingly limited to the Old British Statutes admitted to be in force, to the Colonial Statutes, to the penal law in such parts as needed reform, and to such new laws as would be favorable to the intellectual & moral condition of the community. In the changes made in the penal law, the Revisors were unfortunately misled into some of the specious errors of Beccaria, then in the zenith of his fame as a Philosophical Legislator.

The work employed the Commissioners several years, and was reported in upwards of a hundred Bills, many of which were readily, as others have been from time to time passed into laws; the residue being a fund still occasionally drawn on in the course of Legislation. The work is thought to be particularly valuable as a model of statutory composition. It contains not a superfluous word, and invariably prefers technical terms & phrases having a settled meaning where they are applicable. The Copies of the Report printed were but few, and are now very rare, or I should be happy in forwarding one in re-

turn for your politeness. I may mention however that many years ago, at the request of Judge H. Pendleton of S. Carolina, then engaged in revising the laws of the State, I lent him a Copy, which not having been returned, may possibly be traced to the hands into which his death threw it.

Be pleased to accept, Sir, the expression of my great respect.

TO N. P. TRIST MAD. MSS.

MONTP^{R}, Jan^{y} 26, 1828.

DEAR SIR Your favors of the 18th have been duly rec^{d} I am sorry you thought an apology necessary for the delay in sending me the residue of my letters to Mr. Jefferson; and rather surprized that you should be scrupulous of reading any of them. I took for granted that you would regard them, as on his files equally open tho' less entitled to inspection than his to me. In forwarding the parcels you are so obliging as to gather for me, it may be best to wait for a private & direct conveyance, if such an one be near in propect. Otherwise there is so little risk in so short a distance by the mail, that I have no objection to that conveyance.

Before I rec^{d} your letter I had not adverted to the criticism in the Advocate on Mr. Rush; nor even read the criticism on the criticism, being diverted from it by the signature, which, I ascribed to the author who has published so much under it, and whose views of every branch of the subject I thought myself sufficiently acquainted with.

I had indeed read but skimmingly the Treasury Report itself. I was certainly not struck with the passage in question as a heresy, and suspect that it must have been misunderstood by those who denounce it as such.[1]

How far or in what mode it may be proper to countervail by encouragements to Manufactures, the invitations given to Agriculture, by superadding to other lands in the Market the vast field of cheap & fertile lands opened by Cong^{s}, is assuredly a fair subject for discussion. But that such a field is attractive to Agriculture as much as an augmentation of profits is to Manufactures, I conceive to be almost luce clarius. It is true that as the enlarged sale of fertile lands may be increasing the food & other articles in Market cheapen them to the manufacturer, and so far operate for a time at least as an encouragement to him; but the advantage bears in this case no proportion to the effect of a redundancy of cheap & fertile lands in drawing of capital as well as that class of population from which manufactories are to be recruited.

The actual fall in the price of land particularly in Virginia may be attributed to several causes 1. to the uncertainty & low prices of the crops. 2. to the quantity of land thrown into market by debtors, and the defect of purchasers, both owing to the

[1] Richard Rush, as Secretary of the Treasury, in his report for 1827 advanced the usual protectionist argument in favor of the benefit to agriculturalists of a better market from the increased number of artisans. *Cong. Debates*, 20th Cong., 1st Sess., p. 2824.

general condition of the people, not difficult but unnecessary to be explained. But the 3 and main cause is the low price at which fertile lands in the Western market are attainable; tempting the owners here to sell out & convert the proceeds, or as much of them as they can spare, into cheaper & better lands there.

Nothing would be further from my wishes than to withhold at proper prices, a fair supply, of the Nat[l] domain to Emigrants, whether of choice or of necessity: But how can it be doubted that in proportion as the supply should be reduced in quantity or raised in price, emigration would be checked and the price of land here augmented.

Put the case that the dividing mountains were to become, an impassable barrier to further emigrations, is it not obvious that the price of land on this side, except so far as other temporary causes might be a check, would spring up the moment the fact was known. Or take another case: that the population on the other side, instead of being there had remained & been added to the number on this, can it be believed that the price of land on this would be as low as it is. Suppose finally a general reflux of the Western population into the old States, a like effect on the price of land can be still less doubted.

That the redundancy & cheapness of land is unfavorable to manufactures, in a degree even beyond the comparative profitableness of the labour bestowed, is shewn by experience, and is easily explained. The pride of ownership when this exists or is expected, the air of great freedom, the less of

constancy & identity of application, are known to seduce to rural life the drudges in workshops. What w^d^ be the condition of Birmingham or Manchester were 40 or 50 millions of fertile acres placed at an easy distance and offered at the price of our Western lands? What a transfer of capital, & difficulty of retaining or procuring operatives w^d^ ensue! And altho' the addition to the products of the earth, by cheapening the necessaries of life, might seem to favor manufactures, the advantage would be vastly overbalanced by the increased price of labour produced by the new demand for it, and by the superior attractiveness of the agricultural demand.

Why do such numbers flee annually from the more populous to less populous parts of the U. S. where land is cheaper? Evidently Because less labour, is more competent to supply the necessaries & comforts of life. Can an instance be produced of emigrants from the soil of the West, to the manufactories of Mass^ts^ or Pen^a^

Among the effects of the transmigration from the Atlantic region to the ultra-montane, it is not to be overlooked that besides reducing the price of land in the former by diminishing the proportion of inhabitants; it reduces it still further by reducing the value of its products in glutted markets. This is the result at which the reasoning of the——[1] fairly arrived, and justifies the appeal made to the interest of the Southern farmers & planters on the question

[1] The MS. draft has the word "erased" here followed by "Hamilton" which is struck out.

of having the same people for consumers of their vendibles, or rival producers of them.

But whilst I do justice to the successful reasoning in the case, I take the liberty of remarking, that in comparing land with machinery or materials an important distinction sh^d be kept in view. Land unlike the latter, is a co-operating *self-agent*, with a surface not extendible by art, as machines & in many cases materials also, may be multiplied by it. Arkwright's machine, which co-operates a thousand times as much with human agency as the Earth does, being multipliable indefinitely, soon sinks in the price to the mere cost of construction. Were the surface or the fertility of the earth Equally susceptible of increase, artificial & indefinite the cases would be parallel. The earth is rather a source; than an instrument or material for the supplies of manufactūg, except when used in potting & brick work.

Having thus undertaken to criticise a criticism on a point of some amount I will indulge the mood as to a very minute one. You use the word "doubtless*ly*." As you may live long, and may write much, it might be worth while to save the reiterated trouble of two supernumerary letters if they were merely such. But if there be no higher authority than the Lexicography of Johnson, the ly is apocryphal: And if not so, the cacophony alone of the elongated word ought to banish it; *doubtless* being, without doubt, an adverb, as well as an adjective, and more used in the former than the latter character.

TO MARQUIS DE LA FAYETTE. MAD. MSS.

MONTPR, Feby 20, 1828

MY DEAR FRIEND, Your favor of Oct 27 has been some time on hand, tho' it met with delays, after it got into port. My health in which you take so kind an interest was as reported interrupted by a severe, tho' short attack, but is now very good. I hope yours is so without having suffered any interruption.

I wish I could give you fuller & better accounts of the Monticello affairs. Neither Virginia, nor any other State has added to the provision made for Mrs. Randolph by S. Carolina & Louisiana; and the Lottery, owing to several causes, has entirely failed. The property sold, consisting of *all* the Items except the lands & a few pictures & other ornaments, was fortunate in the prices obtained. I know not the exact amount. But a balance of debt remains, which I fear, in the sunken value and present unsalableness of landed property, will require for its discharge a more successful use of the manuscripts proper for the Press, than is likely to be soon effected. A prospectus has been lately published by Mr. Jefferson Randolph, extending to 3 or 4 8° vols, and considerable progress is made, I understand, in selecting (a very delicate task) and transcribing (a tedious one) the materials for the Edition. In this country also, subscriptions in the extent hoped for, will require time, and arrangements are yet to be made for cotemporary publications in England & France, in both of which they are as they ought to be contem-

plated. I have apprized Mr. Randolph of your friendly dispositions with respect to a French Edition &c, for which he is very thankful, and means to profit by. From this view of the matter, we can only flatter ourselves that the result, will be earlier, than the promise, and prove adequate to the occasion. If the difficulties in the way of the enlarged plan of publication can be overcome, and the work have a sale corresponding with its intrinsic merits, it cannot fail to be very productive. A memoir making a part of it will be particularly attractive in France, portraying as it does the Revolutionary scenes, whilst Mr. Jefferson was in Paris. Is there not some danger that a censorship, may shut the press against such a publication? I fear the translator will be obliged to skip over parts at least, and those perhaps among the most interesting.

Mrs. M. has just rec^{d} a letter from Mrs. Randolph, in which she manifests a fixed purpose of returning to Virginia, in the month of May. Her health has been essentially improved since she left it.

I was aware, when I saw the printed letter of Mr. Jefferson in wh^{ch} he animadverts on licentious printers, that if seen in Europe, it would receive the misconstruction, or rather perversion to which you allude. Certain it is that no man more than Mr. Jefferson, regarded the freedom of the press, as an essential safeguard to free Gov^{t}, to which no man c^{d} be more devoted than he was, and that he never could therefore have expressed a syllable or entertained a thought unfriendly to it.

I have not supposed it worth while to notice at so late a day the misprint in the "Enquirer" to which you refer, because I take for granted that a correct expression of what you said on the 4th of July, will be preserved in depositories more likely to be resorted to than a Newspaper.

We learn with much gratification that the Greeks are rescued from the actual atrocities suffered, & the horrible doom threatened from the successes of their savage Enemy. The disposition to be made of them by the mediating Powers is a problem full of anxiety. We hope for the best, after their escape from the worst. We are particularly gratified also by the turn given to the elections in France, so little expected at the date of your letter, and which must give some scope for your patriotic exertions. If the event does not mean all that we wish it to do, it marks a progress of the public sentiment in a good direction. Your speech on the tomb of Manuel is well calculated to nourish & stimulate it.

I well knew the painful feelings with which you would observe the extravagances produced by the Presidential contest. They have found their way into the discussions of Congress & the State Legislatures, and have assumed forms that cannot be too much deplored. It happens too unfortunately, that the questions of Tariff & of Roads & Canals, which divide the public, on the grounds both of the Const^{n} & of justice, come on at the same time, are blended with & greatly increase the flame kindled by the Electioneering zeal. In Georgia fuel was derived

from a further source, a discontent at the tardy removal of the Indians from lands within her State limits. Resolutions of both Georgia & S. Carolina have been passed & published which abroad may be regarded as striking at the Union itself, but they are ebullitions of the moment, and so regarded here. I am sorry that Virginia has caught too much of the prevailing fever. I think that with her at least its symptoms are abating.

Your answer to Mr. Clay was included in the voluminous testimony published by him, in repelling charges made agst him. Your recollections could not fail to be of avail to him, and were so happily stated as to give umbrage to no party.

In the zeal of party, a large & highly respectable meeting at Richmond, in recommending Presidential Electors, were led by a misjudging policy to put on their ticket the names of Mr. Monroe & myself, not only without our sanction, but on sufficient presumptions that they would be withdrawn. In my answer to that effect, I have ventured to throw in a dehortation from the violent manner in which the contest is carried on. How it may be relished by the parties I know not.[1]

[1] Madison's declination was addressed to Francis Brooke and printed in the Richmond Enquirer March 4:

MONTPELLIER, Feb^{y} 22, 1828.

DEAR SIR, The mail of last evening brought me your circular communication, by which I am informed of my being nominated by the Convention at Richmond on the 8th of Jan^{y} one of the Electors recommended for the next appointment of Chief Magistrate of the U. States.

Whilst I express the great respect I feel to be due to my fellow

You sympathize too much with a Country that continues its affection for you, without abatement, not to be anxious to know the probable result, as well as the present state of the ardent Contest. I can only say that the Party for Gen! Jackson are quite confident, and that for Mr. Adams, apparently with but faint hopes. Whether any change, for which there is time, will take place in the prospect, cannot be foreseen. A good deal will depend on the vote of N. York, and I see by the Newspapers that the sudden death of Mr. Clinton is producing in both parties rival appeals thro' obituary Eulogies, to the portion of the people particularly attached to him.

Miss F. Wright has just returned in good health, via N. Orleans, to her Establishment in Tennessee, and

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Citizens composing that assembly, I must request that another name be substituted for mine on their Electoral ticket.

After a continuance in Public Life, with a very brief interval, through a period of more than forty years, and at the age then attained, I considered myself as violating no duty, in allotting for what of life might remain, a retirement from scenes of political agitation & excitement. Adhering to this view of my situation, I have forborne during the existing contest, as I had done during the preceding, to participate in any measures of a party character; and the restraint imposed on myself, is necessarily strengthened by an admonishing sense of increasing years. Nor, with these considerations could I fail to combine, a recollection of the Public relations in which I had stood to the distinguished Individuals now dividing the favour of their country, and the proofs given to both, of the high estimation in which they were held by me.

In offering this explanation, I hope I may be pardoned for not suppressing a wish, which must be deeply & extensively felt, that the discussions incident to the depending contest, may be conducted in a spirit and manner, neither unfavorable to a dispassionate result, nor unworthy of the great & advancing cause of Representative Government.—*Mad. MSS.*

has announced a change in the plan of it, probably not unknown to you. With her rare talents & still rarer disinterestedness she has I fear created insuperable obstacles to the good fruits of which they might be productive by her disregard or rather defiance of the most established opinion & vivid feelings. Besides her views of amalgamating the white & black population so universally obnoxious, she gives an eclât to her notions on the subject of Religion & of marriage, the effect of which your knowledge of this Country can readily estimate. Her sister in her absence had exchanged her celibacy for the state of wedlock, with what companion I am not informed, nor whether with the new or old ideas of the conjugal knot.

Our University is doing, tho' not as well as we c^{d} wish, as well as could be reasonably expected. An early laxity of discipline, had occasioned irregularities in the habits of the students which were rendering the Institution unpopular. To this evil an effectual remedy has been applied. The studious & moral conduct of the young men will now bear a comparison with the best examples in the U. S. But we have been unfortunate in losing a Professor of Mathematics, who was a valuable acquisition, and are soon to lose the Professor of Ancient Languages, whose distinguished Competency we can scarcely hope to replace. Both of them were from England, & tho' professing to be friendly to this Country, and doing well in their respective stations, preferred a return to their native home; one of them seduced

by an appointment in the new University in London; and the other, it is supposed, by the hope of obtaining an appointment. But the great cause which retards the growth of the Institution, is the pecuniary distress of the State, the effect of scanty crops & reduced prices, with habits of expence the effect of a better state of things. The mass of our people as you know, consists of those who depend on their Agricultural resources, and the failure of these, leaves it in the power of but few parents, to give the desired education to their sons, cheap as it has been made to them. We cherish the hope of a favorable change, but the immediate prospect is not flattering.

My mother, little changed since you saw her rec^{d} with much sensibility your kind remembrance, and charges me with the due returns. Mrs. M. joins me in assurances of every good wish for yourself, your son, and the whole household, with an extension to Mr. Le Vasseur. Most affectionately yr^{s}

TO WILLIAM WIRT. MAD. MSS.

MONTP^{R}, May 5, 1828

DEAR SIR, I cannot better comply with the wish of Mr. Eppes, than by committing to your perusal the inclosed letter just rec^{d} from him. You are probably not ignorant of his great worth, and the entire confidence due to whatever facts he may state; and will I am sure feel every appropriate disposition to favor the young friend he so warmly recommends as far as propriety will admit.

Will you permit me to remind you of the letters from Mr. Pendleton, sent you some years ago when you were gathering materials for the Biography of Mr. Henry. I am now putting into final arrangement the letters of my Correspondents, and those in question, tho' as far as I recollect, of no peculiar importance will fill a gap left in a series from a peculiarly valued friend. You will oblige me therefore by enabling me to make that use of them. I ask the favor of you also, to return at due time the letter from Mr. Eppes, which I may have occasion to answer.

I beg you my dear Sir to be assured of my continued esteem & accept my cordial salutations.

TO MARTIN VAN BUREN. MAD. MSS.

May 13 1828

D^R^ SIR, Perceiving that I am indebted to you for a Copy of the Report to the Senate relating to the "Colonization of persons of Colour" I return the thanks due to your politeness. The Document contains much interesting matter, and denotes an able hand in the preparation of it. I find it more easy however, to accede to its conclusion ag^st^ the Power claimed for Cong^s^ than to some of the positions & reasonings employed on the occasion.

You will not I am sure, take it amiss if I here point to an *error of fact* in your "observations on Mr. Foot's amendment."[1] It struck me when first reading

[1] The speech was on the right of the Vice-President to call a senator to order for words spoken in debate. He said: ". . . But the leading

them, but escaped my attention when thanking you for the copy with which you favored me. The *threatening contest* in the Convention of 1787 did not, as you supposed, turn on the degree of power to be granted to the Federal Gov.t but on the rule by which the States should be represented and vote in the Gov.t; the smaller States insisting on the rule of equality in all respects; the larger on the rule of proportion to inhabitants; and the compromize which ensued was that which established an equality in the Senate, and an inequality in the House of Representatives.

The contests & compromises turning on the grants of power, tho' very important in some instances, were Knots of a less "Gordian" character.

TO THOMAS LEHRE.[1] MAD. MSS.

August 2d, 1828

D.R Sir, I have rec.d your letter of July 21, and offer my acknowledgments for its friendly enquiries

division in the Convention was between those who, distrustful of the States, sought to abridge their powers, that those of the new government might be enlarged; and those who, on their part, distrustful, perhaps jealous of the government about to be created, were as strenuous to retain all powers not indispensably necessary to enable the federal government to discharge the specified and limited duties to be imposed upon it."—*Substance of Mr. Van Buren's observations on Mr. Foot's amendment to the Rules of the Senate.* Washington, 1828.

[1] The draft of this letter is marked "not sent." Lehre wrote from Charleston: "Disunion is now publicly spoken of & advocated by men, who heretofore always reprobated such an Idea. What would Mr. Jefferson say if he was now alive, to see the great strides that are now making to destroy the beautiful Republican System of Government, the best the world ever saw, which he & yourself laboured so long to establish for the welfare and happiness of your Country."—*Mad. MSS.*

concerning my health, a blessing which I enjoy in as great a degree as could be reasonably looked for at the stage of life to which I am now advanced.

It gives me much pain to find you confirming the spirit of disunion said to prevail in your State. From the high reputation enjoyed by S. Carolina, for a political Deportment, marked not less by a respect for order than, a love of liberty, from the warm attachment she has ever evinced to the Union, and from her full share of interest in its preservation, I must say she is among the last States within which I could have anticipated sentiments & scenes, such as are described. I cannot but hope that they will be as transient as they are intemperate; and that a foresight of the awful consequences which a separation of the States portends, will soon reclaim all well meaning but miscalculating Citizens to a tone of feeling within the limits of the occasion; the sooner as it does not appear that any other State, certainly not this; however disapproving the measures, complained of, is observed to sympathize with the effect they are producing in S. Carolina.

All Gov^ts^ even the best, as I trust ours will prove itself to be, have their infirmities. Power wherever lodged, is liable more or less to abuse. In Gov^ts^ organized on Republican principles it is necessarily lodged in the majority; which sometimes from a deficient regard to justice, or an unconscious bias of interest, as well as from erroneous estimates of public good, may furnish just ground of complaint to the minority. But those who would rush at once into

disunion as an Asylum from offensive measures of the Gen^{l} Gov^{t} would do well to examine how far there be such an identity of interests, of opinions, and of feelings, present & permanent, throughout the States individually considered, as, in the event of their separation, w^{d} in all cases secure minorities agst wrongful proceedings of majorities. A recurrence to the period anterior to the adoption of the existing Constitution, and to some of the causes which led to it, will suggest salutary reflections on this subject.

TO JOSEPH C. CABELL. MAD. MSS.

MONTP^{R} Sep^{r} 18 1828.

DEAR SIR Your late letter reminds me of our Conversation on the constitutionality of the power in Cong^{s} to impose a tariff for the encouragem^{t} of Manufactures; and of my promise to sketch the grounds of the confident opinion I had expressed that it was among the powers vested in that Body. I had not forgotten my promise, & had even begun the task of fulfilling it; but frequent interruptions from other causes, being followed by a bilious indisposition, I have not been able sooner to comply with your request. The subjoined view of the subject, might have been advantageously expanded; but I leave that improvement to your own reflections and researches.[1]

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[1] On Sept. 27 Cabell wrote Madison asking permission to print this letter and on October 15 Madison replied that because of the all-absorbing interest in the impending presidential election it must not be

The Constitution vests in Congress expressly "the power to lay & collect taxes duties imposts & excises;" and "the power to regulate trade"

That the former Power, if not particularly ex-

printed until the election was over and the public mind should be in a tranquil state.—*Mad. MSS.*

Madison wrote to Cabell again October 30:

"In my letter of September 18th, I stated briefly the grounds on which I rested my opinion that a power to impose duties & restrictions on imports with a view to encourage domestic productions, was constitutionally lodged in Congress. In the observations then made was involved the opinion also, that the power was properly there lodged. As this last opinion necessarily implies that there are cases in which the power may be usefully exercised by Congress, the only Body within our political system capable of exercising it with effect, you may think it incumbent on me to point out cases of that description.

"I will premise that I concur in the opinion that, as a *general* rule, individuals ought to be deemed the best judges, of the best application of their industry and resources.

"I am ready to admit also that there is no Country in which the application may, with more safety, be left to the intelligence and enterprize of individuals, than the U. States.

"Finally, I shall not deny that, in all doubtful cases, it becomes every Government to lean rather to a confidence in the judgment of individuals, than to interpositions controuling the free exercise of it.

"With all these concessions, I think it can be satisfactorily shewn, that there are exceptions to the general rule, now expressed by the phrase 'Let us alone,' forming cases which call for interpositions of the competent authority, and which are not inconsistent with the generality of the rule.

"1. The Theory of 'Let us alone,' supposes that all nations concur in a perfect freedom of commercial intercourse. Were this the case, they would, in a commercial view, be but one nation, as much as the several districts composing a particular nation; and the theory would be as applicable to the former, as to the latter. But this golden age of free trade has not yet arrived; nor is there a single nation that has set the example. No Nation can, indeed, safely do so, until a reciprocity at least be ensured to it. Take for a proof, the familiar case of the navigation employed in a foreign commerce. If a nation adhering to the rule of never interposing a countervailing protection of its vessels, admits foreign vessels into its ports free of duty, whilst its own

pressed, would have been included in the latter, as one of the objects of a general power to regulate trade, is not necessarily impugned, as has been alledged, by its being so expressed. Examples of

vessels are subject to a duty in foreign ports, the ruinous effect is so obvious, that the warmest advocate for the theory in question, must shrink from a *universal* application of it.

"A nation leaving its foreign trade, in all cases, to regulate itself, might soon find it regulated by other nations, into a subserviency to a foreign interest. In the interval between the peace of 1783, and the establishment of the present Constitution of the U. States, the want of a General Authority to regulate trade, is known to have had this consequence. And have not the pretensions & policy latterly exhibited by G. Britain, given warning of a like result from a renunciation of all countervailing regulations, on the part of the U. States. Were she permitted, by conferring on certain portions of her Domain the name of Colonies, to open from these a trade for herself, to foreign Countries, and to exclude, at the same time, a reciprocal trade to such colonies by foreign Countries, the use to be made of the monopoly needs not be traced. Its character will be placed in a just relief, by supposing that one of the Colonial Islands, instead of its present distance, happened to be in the vicinity of G. Britain, or that one of the Islands in that vicinity, should receive the name & be regarded in the light of a Colony, with the peculiar privileges claimed for colonies. Is it not manifest, that in this case, the favored Island might be made the sole medium of the commercial intercourse with foreign nations, and the parent Country thence enjoy every essential advantage, as to the terms of it, which would flow from an *unreciprocal* trade from her other ports with other nations.

"Fortunately the British claims, however speciously coloured or adroitly managed were repelled at the commencement of our comercial career as an Independent people; and at successive epochs under the existing Constitution, both in legislative discussions and in diplomatic negotiations. The claims were repelled on the solid ground, that the Colonial trade as a *rightful monopoly*, was limited to the intercourse between the parent Country & its Colonies, and between one Colony and another; the whole being, strictly in the nature of a coasting trade from one to another port of the same nation; a trade with which no other nation has a right to interfere. It follows of necessity, that the Parent Country, whenever it opens a Colonial port for a direct trade to a foreign Country, departs itself from the principle of Colonial

this sort, cannot sometimes be easily avoided, and are to be seen elsewhere in the Constitution. Thus the power "to define & punish offences agst the law of Nations" includes the power, afterward partic-

Monopoly, and entitles the foreign Country to the same reciprocity in every respect, as in its intercourse with any other ports of the nation.

"This is common sense, and common right. It is still more, if more could be required; it is in conformity with the established usage of all nations, other than Great Britain, which have Colonies; notwithstanding British representations to the contrary. Some of those Nations are known to adhere to the monopoly of their Colonial trade, with all the rigor & constancy which circumstances permit. But it is also known, that whenever, and from whatever cause, it has been found necessary or expedient, to open their Colonial ports to a foreign trade, the rule of reciprocity in favour of the foreign party was not refused, nor, as is believed, a right to refuse it ever pretended.

"It cannot be said that the reciprocity was dictated by a deficiency of the commercial marine. France, at least could not be, in every instance, governed by that consideration; and Holland still less; to say nothing of the navigating States of Sweden and Denmark, which have rarely if ever, enforced a colonial monopoly. The remark is indeed obvious, that the shipping liberated from the usual conveyance of supplies from the parent Country to the Colonies, might be employed in the new channels opened for them in supplies from abroad.

"Reciprocity, or an equivalent for it, is the only rule of intercourse among Independent communities; and no nation ought to admit a doctrine, or adopt an invariable policy, which would preclude the counteracting measures necessary to enforce the rule.

"2. The Theory supposes moreover a perpetual peace, not less chimerical, it is to be feared, than a universal freedom of commerce.

"The effect of war among the commercial and manufacturing nations of the World, in raising the wages of labour and the cost of its products, with a like effect on the charges of freight and insurance, needs neither proof nor explanation. In order to determine, therefore, a question of economy between depending on foreign supplies, and encouraging domestic substitutes, it is necessary to compare the probable periods of war, with the probable periods of peace; and the cost of the domestic encouragement in times of peace, with the cost added to foreign articles in times of War.

"During the last century the periods of war and peace have been nearly equal. The effect of a state of war in raising the price of im-

ularly expressed "to make rules concerning captures &c., from offending Neutrals." So also, a power "to coin money," would doubtless include that of "regulating its value," had not the latter

ported articles, cannot be estimated with exactness. It is certain, however, that the increased price of particular articles, may make it cheaper to manufacture them at home.

"Taking, for the sake of illustration, an equality in the two periods, and the cost of an imported yard of cloth in time of war to be 9½ dollars, and in time of peace to be 7 dollars, whilst the same could, at all times, be manufactured at home, for 8 dollars; it is evident that a tariff of 1¼ dollar on the imported yard, would protect the home manufacture in time of peace, and avoid a tax of 1½ dollars imposed by a state of war.

"It cannot be said that the manufactories, which could not support themselves in periods of peace, would spring up of themselves at the recurrence of war prices. It must be obvious to every one, that, apart from the difficulty of great & sudden changes of employment, no prudent capitalists would engage in expensive establishments of any sort, at the commencement of a war of uncertain duration, with a certainty of having them crushed by the return of peace.

"The strictest economy, therefore, suggests, as exceptions to the general rule, an estimate, in every given case, of war & peace periods and prices, with inferences therefrom, of the amount of a tariff which might be afforded during peace, in order to avoid the tax resulting from war. And it will occur at once, that the inferences will be strengthened, by adding to the supposition of wars wholly foreign, that of wars in which our own country might be a party.[1]

"3. It is an opinion in which all must agree, that no nation ought to be unnecessarily dependent on others for the munitions of public defence, or for the materials essential to a naval force, where the nation has a maritime frontier or a foreign commerce to protect. To this class of exceptions to the theory may be added the instruments of agriculture and of mechanic arts, which supply the other primary wants of the community. The time has been when many of these were derived from a foreign source, and some of them might relapse into that dependence were the encouragement to the fabrication of them at home withdrawn. But, as all foreign sources must be liable to interruptions too inconvenient to be hazarded, a provident policy

[1] The rest of the letter is missing from the Madison MSS. and is reprinted from the *Works of Madison* (Cong. Ed.).

power been expressly inserted. The term taxes, if standing *alone*, would certainly have included, duties, imposts & excises. In another clause it is said, "no tax or duty shall be laid on imports [exports]," &c.

would favour an internal and independent source as a reasonable exception to the general rule of consulting cheapness alone.

"4. There are cases where a nation may be so far advanced in the pre-requisites for a particular branch of manufactures, that this, if once brought into existence, would support itself; and yet, unless aided in its nascent and infant state by public encouragement and a confidence in public protection, might remain, if not altogether, for a long time unattempted, or attempted without success. Is not our cotton manufacture a fair example? However favoured by an advantageous command of the raw material, and a machinery which dispenses in so extraordinary a proportion with manual labour, it is quite probable that, without the impulse given by a war cutting off foreign supplies and the patronage of an early tariff, it might not even yet have established itself; and pretty certain that it would be far short of the prosperous condition which enables it to face, in foreign markets, the fabrics of a nation that defies all other competitors. The number must be small that would now pronounce this manufacturing boon not to have been cheaply purchased by the tariff which nursed it into its present maturity.

"5. Should it happen, as has been suspected, to be an object, though not of a foreign Government itself, of its great manufacturing capitalists, to strangle in the cradle the infant manufactures of an extensive customer or an anticipated rival, it would surely, in such a case, be incumbent on the suffering party so far to make an exception to the 'let alone' policy as to parry the evil by opposite regulations of its foreign commerce.

"6. It is a common objection to the public encouragement of particular branches of industry, that it calls off labourers from other branches found to be more profitable; and the objection is, in general, a weighty one. But it loses that character in proportion to the effect of the encouragement in attracting skilful labourers from abroad. Something of this sort has already taken place among ourselves, and much more of it is in prospect; and as far as it has taken or may take place, it forms an exception to the general policy in question.

"The history of manufactures in Great Britain, the greatest manufacturing nation in the world, informs us, that the woollen branch, till of late her greatest branch, owed both its original and subsequent growths

Here the two terms are used as synonymous. And in another clause where it is said, "no State shall lay any imposts or duties" &c, the terms imposts & duties are synonymous. Pleonasms, tautologies

to persecuted exiles from the Netherlands; and that her silk manufactures, now a flourishing and favourite branch, were not less indebted to emigrants flying from the persecuting edicts of France. [*Anderson's History of Commerce.*]

"It appears, indeed, from the general history of manufacturing industry, that the prompt and successful introduction of it into new situations has been the result of emigrations from countries in which manufactures had gradually grown up to a prosperous state; as into Italy, on the fall of the Greek Empire; from Italy into Spain and Flanders, on the loss of liberty in Florence and other cities; and from Flanders and France into England, as above noticed. [*Franklin's Canadian Pamphlet.*]

"In the selection of cases here made, as exceptions to the 'let alone' theory, none have been included which were deemed controvertible; and if I have viewed them, or a part of them only, in their true light, they show what was to be shown, that the power granted to Congress to encourage domestic products by regulations of foreign trade was properly granted, inasmuch as the power is, in effect, confined to that body, and may, when exercised with a sound legislative discretion, provide the better for the safety and prosperity of the nation."

Notes.

"It does not appear that any of the strictures on the letters from J. Madison to J. C. Cabell have in the least invalidated the constitutionality of the power in Congress to favour domestic manufactures by regulating the commerce with foreign nations.

"1. That this regulating power embraces the object remains fully sustained by the uncontested fact that it has been so understood and exercised by all commercial and manufacturing nations, particularly by Great Britain; nor is it any objection to the inference from it, that those nations, unlike the Congress of the United States, had all other powers of legislation as well as the power of regulating foreign commerce, since this was the particular and appropriate power by which the encouragement of manufactures was effected.

"2. It is equally a fact that it was generally understood among the States previous to the establishment of the present Constitution of the United States, that the encouragement of domestic manufactures by

& the promiscuous use of terms & phrases differing in their shades of meaning, (always to be expounded with reference to the context and under the controul of the general character & manifest scope of

regulations of foreign commerce, particularly by duties and restrictions on foreign manufactures, was a legitimate and ordinary exercise of the power over foreign commerce; and that, in transferring this power to the Legislature of the United States, it was anticipated that it would be exercised more effectually than it could be by the States individually. [See Lloyd's Debates and other publications of the period.]

"It cannot be denied that a right to vindicate its commercial, manufacturing, and agricultural interests against unfriendly and unreciprocal policy of other nations, belongs to every nation; that it has belonged at all times to the United States as a nation; that, previous to the present Federal Constitution, the right existed in the governments of the individual States, not in the Federal Government; that the want of such an authority in the Federal Government was deeply felt and deplored; that a supply of this want was generally and anxiously desired; and that the authority has, by the substituted Constitution of the Federal Government, been expressly or virtually taken from the individual States; so that, if not transferred to the existing Federal Government it is lost and annihilated for the United States as a nation. Is not the presumption irresistible, that it must have been the intention of those who framed and ratified the Constitution, to vest the authority in question in the substituted Government? and does not every just rule of reasoning allow to a presumption so violent a proportional weight in deciding on a question of such a power in Congress, not as a source of power distinct from and additional to the constitutional source, but as a source of light and evidence as to the true meaning of the Constitution?

"3. It is again a fact, that the power was so exercised by the first session of the first Congress, and by every succeeding Congress, with the sanction of every other branch of the Federal Government, and with universal acquiescence, till a very late date. [See the Messages of the Presidents and the Reports and Letters of Mr. Jefferson.]

"4. That the surest and most recognized evidence of the meaning of the Constitution, as of a law, is furnished by the evils which were to be cured or the benefits to be obtained; and by the immediate and long-continued application of the meaning to these ends. This species of evidence supports the power in question in a degree which cannot

the Instrument in which they are found) are to be ascribed sometimes to the purpose of greater caution; sometimes to the imperfections of language; & sometimes to the imperfection of man himself. In this

be resisted without destroying all stability in social institutions, and all the advantages of known and certain rules of conduct in the intercourse of life.

"5. Although it might be too much to say that no case could arise of a character overruling the highest evidence of precedents and practice in expounding a constitution, it may be safely affirmed that no case which is not of a character far more exorbitant and ruinous than any now existing or that has occurred, can authorize a disregard of the precedents and practice which sanction the constitutional power of Congress to encourage domestic manufactures by regulations of foreign commerce.

"The importance of the question concerning the authority of precedents, in expounding a constitution as well as a law, will justify a more full and exact view of it.

"It has been objected to the encouragement of domestic manufactures by a tariff on imported ones, that duties and imposts are in the clause specifying the sources of revenue, and therefore cannot be applied to the encouragement of manufactures when not a source of revenue.

"But, 1. It does not follow from the applicability of duties and imposts under one clause for one usual purpose, that they are excluded from an applicability under another clause to another purpose, also requiring them, and to which they have also been usually applied.

"2. A history of that clause, as traced in the printed journal of the Federal Convention, will throw light on the subject.

"It appears that the clause, as it originally stood, simply expressed 'a power to lay taxes, duties, imposts, and excises,' without pointing out the objects; and, of course, leaving them applicable in carrying into effect the other specified powers. It appears, farther, that a solicitude to prevent any constructive danger to the validity of public debts contracted under the superseded form of government, led to the addition of the words 'to pay the debts.'

"This phraseology having the appearance of an appropriation limited to the payment of debts, an express appropriation was added 'for the expenses of the Government,' &c.

"But even this was considered as short of the objects for which taxes, duties, imposts, and excises might be required; and the more comprehensive provision was made by substituting 'for expenses of Govern-

view of the subject, it was quite natural, however certainly the general power to regulate trade might include a power to impose duties on it, not to omit it in a clause enumerating the several modes of reve-

ment' the terms of the old Confederation, viz.: and provide for the common defence and general welfare, making duties and imposts, as well as taxes and excises, applicable not only to payment of debts, but to the common defence and general welfare.

"The question then is, What is the import of that phrase, common defence and general welfare, in its actual connexion? The import which Virginia has always asserted, and still contends for, is, that they are explained and limited to the enumerated objects subjoined to them, among which objects is the regulation of foreign commerce; as far, therefore, as a tariff of duties is necessary and proper in regulating foreign commerce for any of the usual purposes of such regulations, it may be imposed by Congress, and, consequently, for the purpose of encouraging manufactures, which is a well-known purpose for which duties and imposts have been usually employed. This view of the clause providing for revenue, instead of interfering with or excluding the power of regulating foreign trade, corroborates the rightful exercise of power for the encouragement of domestic manufactures.

It may be thought that the Constitution might easily have been made more explicit and precise in its meaning. But the same remark might be made on so many other parts of the instrument, and, indeed, on so many parts of every instrument of a complex character, that, if completely obviated, it would swell every paragraph into a page and every page into a volume; and, in so doing, have the effect of multiplying topics for criticism and controversy.

The best reason to be assigned, in this case, for not having made the Constitution more free from a charge of uncertainty in its meaning, is believed to be, that it was not suspected that any such charge would ever take place; and it appears that no such charge did take place, during the early period of the Constitution, when the meaning of its authors could be best ascertained, nor until many of the contemporary lights had in the lapse of time been extinguished. How often does it happen, that a notoriety of intention diminishes the caution against its being misunderstood or doubted! What would be the effect of the Declaration of Independence, or of the Virginia Bill of Rights, if not expounded with a reference to that view of their meaning?

"Those who assert that the encouragement of manufactures is not within the scope of the power to regulate foreign commerce, and that

nue authorized by the Constitution. In few cases could the "*ex majori cautela*" occur with more claim to respect.

Nor can it be inferred, as has been ingeniously attempted, that a power to regulate trade does not involve a power to tax it, from the distinction made in the original controversy with G. Britain, between a power to regulate trade with the Colonies & a power to tax them. A power to regulate trade between different parts of the Empire was confessedly *necessary;* and was admitted to lie, as far as that was the case in the British Parliament, the taxing part being

a tariff is exclusively appropriated to revenue, feel the difficulty of finding authority for objects which they cannot admit to be unprovided for by the Constitution; such as ensuring internal supplies of necessary articles of defence, the countervailing of regulations of foreign countries, &c., unjust and injurious to our navigation or to our agricultural products. To bring these objects within the constitutional power of Congress, they are obliged to give to the power "to regulate foreign commerce" an extent that at the same time necessarily embraces the encouragement of manufactures; and how, indeed, is it possible to suppose that a tariff is applicable to the extorting from foreign Powers of a reciprocity of privileges and not applicable to the encouragement of manufactures, an object to which it has been far more frequently applied?"

He wrote again December 5:

"Has not the passage in Mr. Jefferson's letter to Mr. Giles, to which you allude, denouncing the assumptions of power by the General Government, been in some respects misunderstood? 'They assume,' he says, '*indefinitely* that also over Agriculture and Manufactures.' It would seem that writing confidentially, & probably in haste, he did not discriminate with the care he otherwise might have done, between an assumption of power and an abuse of power; relying on the term '*indefinitely*' to indicate an excess of the latter, and to imply an admission of a *definite* or reasonable use of the power to regulate trade for the encouragement of manufacturing and agricultural products. This view of the subject is recommended by its avoiding a variance with Mr. Jefferson's known sanctions, in official acts & private corre-

at the same time denied to the Parliament, & asserted to be necessarily inherent in the Colonial Legislatures, as sufficient & the only safe depositories of the taxing power. So difficult was it nevertheless to maintain the distinction in practice, that the ingredient of revenue was occasionally overlooked or disregarded in the British regulations; as in the duty on sugar & Molasses imported into the Colonies. And it was fortunate that the attempt at an internal and direct tax in the case of the Stamp Act, produced a radical examination of the subject, before a regulation of trade with a view to revenue had

spondence, to a power in Congress to encourage manufactures by comercial regulations. It is not easy to believe that he could have intended to reject *altogether* such a power. It is evident from the context that his language was influenced by the great injustice, impressed on his mind, of a measure charged with the effect of taking the earnings of one, & that the most suffering class, & putting them into the pockets of another, & that the most flourishing class. Had Congress so regulated an impost for revenue merely, as in the view of Mr. Jefferson to oppress one section of the Union & favor another, it may be presumed that the language used by him, would have been not less indignant, tho the Tariff, in that case, could not be otherwise complained of, than as an abuse, not as a usurpation of power; or, at most, as an abuse violating the spirit of the Constitution, as every unjust measure must that of every Constitution, having justice for a cardinal object. No Constitution could be lasting without an habitual distinction between an abuse of legitimate power, and the exercise of a usurped one. It is quite possible that there might be a latent reference in the mind of Mr. Jefferson to the reports of Mr. Hamilton & Executive recommendations, to Congress favorable to indefinite power over both Agriculture and Manufactures. He might have seen also the report of a Committee of a late Congress presented by Mr. Steward, of Pennsylvania, which in supporting the cause of internal improvement, took the broad ground of 'General Welfare,' (including, of course, *every* internal as well as external power,) without incurring any positive mark of disapprobation from Congress."—*Mad. MSS.*

grown into an established Authority. One thing at least is certain, that the main & admitted object of the Parliamentary *regulations* of trade with the Colonies, was the encouragement of *manufactures* in G. B.

But the present question is unconnected, with the former relations between G. B. and her Colonies, which were of a peculiar, a complicated, and, in several respects, of an undefined character. It is a simple question under the Constitution of the U. S. whether "the power to regulate trade with foreign nations" as a distinct & substantive item in the enumerated powers, embraces the object of encouraging by duties restrictions and prohibitions the manufactures & products of the Country? And the affirmative must be inferred from the following considerations:

1. The meaning of the Phrase "to regulate trade" must be sought in the general use of it, in other words in the objects to which the power was generally understood to be applicable, when the Phrase was inserted in the Const^{n}.

2. The power has been understood and used by all commercial & manufacturing Nations as embracing the object of encouraging manufactures. It is believed that not a single exception can be named.

3. This has been particularly the case with G. B., whose commercial vocabulary is the parent of ours. A primary object of her commercial regulations is well known to have been the protection and encouragement of her manufactures

4. Such was understood to be a proper use of the power by the States most prepared for manufacturing industry, while retaining the power over their foreign trade. It was the aim of Virginia herself, as will presently appear, tho' at the time among the least prepared for such a use of her power to regulate trade.

5. Such a use of the power by Cong accords with the intention and expectation of the States in transferring the power over trade from themselves to the Gov^{t} of the U. S. This was emphatically the case in the Eastern, the more manufacturing members of the Confederacy. Hear the language held in the Convention of Mass^{ts} p. 84, 86, 136.

By Mr. Dawes an advocate for the Constitution, it was observed: "our manufactures are another great subject which has rec^{d} no encouragement by national Duties on foreign manufactures, and they never can by any authority in the Old Confed^{n}" again "If we wish to *encourage our own manufactures*, to preserve our own commerce, to raise the value of our own lands, we must give Cong^{s} the powers in question.

By Mr. Widgery, an opponent, "All we hear is, that the merch^{t} & farmer will flourish, & that the mechanic & tradesman are to make their fortunes directly, if the Constitution goes down.

The Convention of Mass^{ts} was the only one in N. Eng^{d} whose debates have been preserved. But it cannot be doubted that the sentiment there expressed was common to the other States in that

quarter, more especially to Connecticut & Rh Isl^d, the most thickly peopled of all the States, and having of course their thoughts most turned to the subject of manufactures. A like inference may be confidently applied to N. Jersey, whose debates in Convention have not been preserved. In the populous and manufacturing State of P^a, a partial account only of the debates having been published, nothing certain is known of what passed in her Convention on this point. But ample evidence may be found elsewhere, that regulations of trade for the encouragement of manufactures, were considered as within the power to be granted to the new Congress, as well as within the scope of the National Policy. Of the States south of Pen^a, the only two in whose Conventions the debates have been preserved are Virg^a & N. Carol^a, and from these no adverse inferences can be drawn. Nor is there the slightest indication that either of the two States farthest South, whose debates in Convention if preserved have not been made public, viewed the encouragement of manufactures as not within the general power over trade to be transferred to the Gov^t of the U. S.

6 If Congress have not the power it is annihilated for the nation; a policy without example in any other nation, and not within the reason of the solitary one in our own. The example alluded to is the prohibition of a tax on exports which resulted from the apparent impossibility of raising in that mode a revenue from the States proportioned to the ability to pay it; the ability of some being derived

in a great measure, not from their exports, but from their fisheries, from their freights and from commerce at large, in some of its branches altogether external to the U. S.; the profits from all which being invisible & intangible would escape a tax on exports. A tax on imports, on the other hand, being a tax on consumption which is in proportion to the ability of the consumers whencesoever derived was free from that inequality.

7 If revenue be the sole object of a legitimate impost, and the encourag^{t} of domestic articles be not within the power of regulating trade it w^{d} follow that no monopolizing or unequal regulations of foreign Nations could be counteracted; that neither the staple articles of subsistence nor the essential implements for the public safety could under any circumstances be ensured or fostered at home by regulations of commerce, the usual & most convenient mode of providing for both; and that the American navigation, tho the source of naval defence, of a cheapening competition in carrying our valuable & bulky articles to Market, and of an independent carriage of them during foreign wars, when a foreign navigation might be withdrawn, must be at once abandoned or speedily destroyed; it being evident that a tonnage duty merely in foreign ports agst our vessels, and an exemption from such a duty in our ports in favor of foreign vessels, must have the inevitable effect of banishing ours from the Ocean.

To assume a power to protect our navigation, &

the cultivation & fabrication of all articles requisite for the Public safety as incident to the war power, would be a more latitudinary construction of the text of the Constitution, than to consider it as embraced by the specified power to regulate trade; a power which has been exercised by all Nations for those purposes; and which effects those purposes with less of interference with the authority & conveniency of the States, than might result from internal & direct modes of encouraging the articles, any of which modes would be authorized as far as deemed "necessary & proper," by considering the Power as an incidental Power.

8 That the encouragement of Manufactures, was an object of the power, to regulate trade, is proved by the use made of the power for that object, in the first session of the first Congress under the Constitution; when among the members present were so many who had been members of the federal Convention which framed the Constitution, and of the State Conventions which ratified it; each of these classes consisting also of members who had opposed & who had espoused, the Constitution in its actual form. It does not appear from the printed proceedings of Congress on that occasion that the power was denied by any of them. And it may be remarked that members from Virg[a] in particular, as well of the antifederal as the federal party, the names then distinguishing those who had opposed and those who had approved the Constitution, did not hesitate to propose duties, & to suggest even prohibitions, in favor of

several articles of her production. By one a duty was proposed on mineral Coal in favor of the Virginia Coal-Pits; by another a duty on Hemp was proposed to encourage the growth of that article; and by a third a prohibition even of foreign Beef was suggested as a measure of sound policy. (See *Lloyd's Debates*.)

A further evidence in support of the Cons, power to protect & foster manufactures by regulations of trade, an evidence that ought of itself to settle the question, is the uniform & practical sanction given to the power, by the Gen! Gov^t^ for nearly 40 years with a concurrence or acquiescence of every State Gov^t^ throughout the same period; and it may be added thro all the vicissitudes of Party, which marked the period. No novel construction however ingeniously devised, or however respectable and patriotic its Patrons, can withstand the weight of such authorities, or the unbroken current of so prolonged & universal a practice. And well it is that this cannot be done without the intervention of the same authority which made the Constitution. If it could be so done, there would be an end to that stability in Gov^t^ and in Laws which is essential to good Gov^t^ & good Laws; a stability, the want of which is the imputation which has at all times been levelled ag^st^ Republicanism with most effect by its most dexterous adversaries. The imputation ought never therefore to be countenanced, by innovating constructions, without any plea of a precipitancy or a paucity of the constructive precedents they oppose; without any appeal to material facts newly brought

to light; and without any claim to a better knowledge of the original evils & inconveniences, for which remedies were needed, the very best keys to the true object & meaning of all laws & constitutions.

And may it not be fairly left to the unbiased judgment of all men of experience & of intelligence, to decide which is most to be relied on for a sound and safe test of the meaning of a Constitution, a uniform interpretation by all the successive authorities under it, commencing with its birth, and continued for a long period, thro' the varied state of political contests, or the opinion of every new Legislature heated as it may be by the strife of parties, or warped as often happens by the eager pursuit of some favourite object; or carried away possibly by the powerful eloquence, or captivating address of a few popular Statesmen, themselves influenced, perhaps, by the same misleading causes. If the latter test is to prevail, every new Legislative opinion might make a new Constitution; as the foot of every new Chancellor would make a new standard of measure.

It is seen with no little surprize, that an attempt has been made, in a highly respectable quarter, and at length reduced to a resolution formally proposed in Congress, to substitute for the power of Cong^{s} to regulate trade so as to encourage manufactures, a power in the several States to do so, with the consent of that Body; and this expedient is derived from a clause in the 10 sect. of Art: I. of the Const; which says: ["No State shall, without the consent of Congress, lay any imposts or duties on imports or ex-

ports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports and exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."]

To say nothing of the clear indications in the Journal of the Convention of 1787, that the clause was intended merely to provide for expences incurred by particular States in their inspection laws, and in such improvements as they might chuse to make in their Harbours & rivers with the sanction of Cong^{r}, objects to which the reserved power has been applied in several instances, at the request of Virginia & of Georgia, how could it ever be imagined that any State would wish to tax its own trade for the encouragement of manufactures, if possessed of the authority, or could in fact do so, if wishing it?

A tax on imports would be a tax on its own consumption; and the nett proceeds going, according to the clause, not into its own treasury, but into the treasury of the U. S., the State would tax itself separately for the equal gain of all the other States; and as far as the manufactures so encouraged might succeed in ultimately increasing the Stock in Market, and lowering the price by competition, this advantage also, procured at the sole expence of the State, would be common to all the others.

But the very suggestion of such an expedient to any State would have an air of mockery, when its *experienced* impracticability is taken into view. No

one who recollects or recurs to the period when the power over Commerce was in the individual States, & separate attempts were made to tax or otherwise regulate it, needs be told that the attempts were not only abortive, but by demonstrating the necessity of general & uniform regulations gave the original impulse to the Constitutional reform which provided for such regulations.

To refer a State therefore to the exercise of a power as reserved to her by the Constitution, the impossibility of exercising which was an inducement to adopt the Constitution, is, of all remedial devices the last that ought to be brought forward. And what renders it the more extraordinary is that, as the tax on commerce as far as it could be separately collected, instead of belonging to the treasury of the State as previous to the Const^{n} would be a tribute to the U. S.; the State would be in a worse condition, after the adoption of the Constitution, than before, in relation to an important interest, the improvement of which was a particular object in adopting the Constitution.

Were Congress to make the proposed declaration of consent to State tariffs in favour of State manufactures, and the permitted attempts did not defeat themselves, what would be the situation of States deriving their foreign supplies through the ports of other States? It is evident that they might be compelled to pay, in their consumption of particular articles imported, a tax for the common treasury not common to all the States, without having any

manufacture or product of their own to partake of the contemplated benefit.

Of the impracticability of separate regulations of trade, & the resulting necessity of general regulations, no State was more sensible than Virg^{a}. She was accordingly among the most earnest for granting to Congress a power adequate to the object. On more occasions than one in the proceedings of her Legislative Councils, it was recited, "that the relative situation of the States had been found on *trial* to require *uniformity* in their comercial regulations as the *only* effectual policy for obtaining in the ports of foreign nations a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the U. S., for preventing animosities which cannot fail to arise among the several States from the interference of partial & separate regulations; and for *deriving from comerce* such aids to the public *revenue* as it ought to contribute," &c.

During the delays & discourag^{ts} experienced in the attempts to invest Cong^{s} with the necessary powers, the State of Virg^{a} made various trials of what could be done by her individual laws. She ventured on duties & imposts as a source of Revenue; Resolutions were passed at one time to encourage & protect her own navigation & ship-building; and in consequence of complaints & petitions from Norfolk, Alex^{a} & other places, agst the monopolizing navigation laws of G. B., particularly in the trade *between the U. S. & the British W. Indies*, she deliberated with a purpose controuled only by the inefficacy of sep-

arate measures, on the experiment of forcing a reciprocity by prohibitory regulations of her own. (See Journal of H^s. of Delegates in 1785.)

The effect of her separate attempts to raise revenue by duties on imports, soon appeared in Representations from her Merch^ts., that the commerce of the State was banished by them into other channels, especially of Mary^d., where imports were less burdened than in Virginia. (See d^o. 1786.)

Such a tendency of separate regulations was indeed too manifest to escape anticipation. Among the projects prompted by the want of a federal auth^y. over Comerce, was that of a concert, first proposed on the part of Mary^d. for a uniformity of regulations between the 2 States, and comissioners were appointed for that purpose. It was soon perceived however that the concurrence of Pen^a. was as necess^y. to Mary^d. as of Mary^d. to Virg^a., and the concurrence of Pennsylvania was accordingly invited. But P^a. could no more concur with^t. N. Y. than M^d. with^t. P^a. nor N. Y. with^t. the concurrence of Boston &c.

These projects were superseded for the moment by that of the Convention at Annapolis in 1786, and forever by the Conv^n at Ph^a in 1787, and the Cons^n. which was the fruit of it.

There is a passage in Mr. Necker's work on the finances of France which affords a signal illustration of the difficulty of collecting, in contiguous communities, indirect taxes when not the same in all, by the violent means resorted to against smuggling from one to another of them. Previous

to the late revolutionary war in that Country, the taxes were of very different rates in the different Provinces; particularly the tax on salt which was high in the interior Provinces & low in the maritime; and the tax on Tobacco, which was very high in general whilst in some of the Provinces the use of the article was altogether free. The consequence was that the standing army of Patrols agst smuggling, had swollen to the number of twenty three thousand; the annual arrests of men women & children engaged in smuggling, to five thousand five hundred & fifty; and the number annually arrested on account of Salt & Tobacco alone, to seventeen or eighteen hundred, more than three hundred of whom were consigned to the terrible punishment of the Galleys.

May it not be regarded as among the Providential blessings to these States, that their geographical relations multiplied as they will be by artificial channels of intercourse, give such additional force to the many obligations to cherish that Union which alone secures their peace, their safety, and their prosperity. Apart from the more obvious & awful consequences of their entire separation into Independent Sovereignties, it is worthy of special consideration, that divided from each other as they must be by narrow waters & territorial lines merely, the facility of surreptitious introductions of contraband articles, would defeat every attempt at revenue in the easy and indirect modes of impost and excise; so that whilst their expenditures would be neces-

sarily & vastly increased by their new situation, they would, in providing for them, be limited to direct taxes on land or other property, to arbitrary assessments on invisible funds, & to the odious tax on persons.

You will observe that I have confined myself, in what has been said to the constitutionality & expediency of the power in congress to encourage domestic products by regulations of commerce. In the exercise of the power, they are responsible to their Constituents, whose right & duty it is, in that as in all other cases, to bring their measures to the test of justice & of the general good.

TO JOHN QUINCY ADAMS. MAD. MSS.

MONTPR, Feby 24, 1829.

DEAR SIR,—I have recd in your kind letter of the 21st instant, the little pamphlet containing the correspondence between yourself and "several citizens of Massachusetts," with "certain additional papers."[1]

The subjects presented to view by the pamphlet will doubtless, not be overlooked in the history of our country. The Documents not previously published are of a very interesting cast. The letter of Govr. Plumer, particularly, if nowise impaired by adverse authority, must receive a very marked attention and have a powerful effect.

As what relates to Col: Hamilton, however, is

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[1] *Correspondence between John Quincy Adams, esquire, President of the United States, and several citizens of Massachusetts, concerning the charge of a design to dissolve the union alleged to have existed in that state.* Boston, 1829.

stated on a solitary information only, I cannot but think there may be some material error at the bottom of it. That the leading agency of such a man, & from a State in the position of New York, should, in a project for severing the Union, be anxiously wished for by its authors is not to be doubted; and an experimental invitation of him to attend a select meeting may without difficulty, be supposed. But obvious considerations oppose a belief that such an invitation would be accepted; and if accepted, the supposition would remain, that his intention might be to dissuade his party & personal friends, from a conspiracy as rash as wicked and as ruinous to the party itself as to the country. The lapse of time must have extinguished lights by which alone the truth in many cases could be fully ascertained. It is quite possible that this may be found an exception. I pray you Sir, to accept a renewed assurance of my esteem and my best wishes.

TO JOSEPH C. CABELL. MAD. MSS.

MONTPELLIER, Aug^{t} 16, 1829.

DEAR SIR,—Your letter of the 5th found me under a return of indisposition which has not yet left me.[1]

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[1] Cabell wrote from Warminster: "May I take the liberty to ask that you will be so good as to read the enclosed pamphlet and to inform me whether the argument in the speech respecting the rights of the parties to the compact be sound and in conformity to your own views of the subject, and if there be error, where and to what extent, it exists." He had advanced the propositions in the pamphlet in the State Senate and afterwards written them out as a speech with notes for printing—*Mad. MSS.*

To this cause you must ascribe the tardiness of my attention to it.

Your speech with the accompanying notes and documents will make a very interesting and opportune publication. I think with Mr. Johnson that your view of the Virginia doctrine in 98–99 is essentially correct and easily guarded against any honest misconstructions. I have pencilled a very few interlineations and erasures, (easily removed if not approved) having that object. I wish you to revise them with an eye to the language of Virginia in her proceedings of that epoch, happening to be without a remaining copy of them. I make the same request as to my remarks below, involving a reference to those proceedings. As to the two paragraphs in brackets, disliked by Mr. J. I am at some loss what to say. Tho' they may certainly be spared without leaving a flaw, the first of them, at least, is so well calculated to rescue the authority of Mr. Jefferson on the constitutionality of the Tariff, from the perverted and disrespectful use made of it, that I should hesitate in advising a suppression of it.

On the subject of an Arbiter or Umpire, it might not be amiss, perhaps, to note at some place, that there can be none, external to the U. S. more than to individual States; nor within either, for those extreme cases, or questions of passive obedience & non-resistence, which justify and require a resort to the original rights of the parties to the compact. But that in all cases, not of that extreme character, there is an Arbiter or Umpire, as within the Govern-

ments of the States, so within that of the U. S. in the authority constitutionally provided for deciding, controversies concerning boundaries of right and power. The provision in the U. S. is particularly stated in the Federalist, N° 39, pa. 241, Gideon's ed^n.

The tonnage and other duties for encouraging navigation are, in their immediate operation, as locally partial to Northern Ship-owners, as a tariff on particular imports is partial to Northern manufacturers. Yet, South Carolina his uniformly favored the former as ultimately making us independent of foreign navigation, and, therefore, in reality of a National character. Ought she not in like manner, to concur in encouraging manufactures, tho' immediately partial to some local interests, in consideration of their ultimate effect in making the Nation independent of foreign supplies; provided the encouragement be not *unnecessarily* unequal in the immediate operation, nor extended to articles not *within the reason* of the policy?

On comparing the doctrine of Virginia in 98–99, with that of the present day in S. C. will it not be found that Virginia asserted that the States, as parties to the Constitutional compact, had a right and were bound, in extreme cases only, and after a failure of all efforts for redress under the forms of the Constitution, to interpose in their sovereign capacity, for the purpose of arresting the evil of usurpation, and preserving the Constitution and Union: Whereas the doctrine of the present day in

S. C. asserts that in a case of not greater magnitude than the degree of inequality in the operation of a tariff in favor of manufactures, she may of herself finally decide, by virtue of her sovereignty, that the Constitution has been violated; and that if not yielded to by the Federal Government, tho' supported by all the other States, she may rightfully resist it and withdraw herself from the Union.

Is not the resolution of the Assembly at their last Session against the Tariff a departure from the ground taken at the preceding session? If my recollection does not err, the power of Congress, to lay imposts, was restricted at this session, to the sole case of revenue. Their late resolution denies it only in the case of manufactures, tacitly admitting, according to the modifications of S. Carolina, tonnage duties, and duties counteracting foreign regulations. If the inconsistency be as I suppose, be so good as to favor me with a transcript of the Resolutions of the penult session.[1] Your letter returning those borrowed was duly received some time ago.

[1] Cabell sent the resolutions of the sessions of 1825–26, 1826–27, and 1828–29. The first declared:—"That the imposition of taxes and duties by the Congress of the U. States, for the purpose of protecting and encouraging domestic manufactures, is an unconstitutional exercise of power and is highly oppressive and partial in its operations."

The second:—"That this General Assembly does hereby most solemnly protest against any claim or exercise of power, whatever, on the part of the General Government, which serves to draw money from the inhabitants of this state, into the treasury of the U. States and to disburse it for any object whatever, except for carrying into effect the grants of power to the General Government contained in the Constitution of the U. States," and

"That this General Assembly does most solemnly protest against the

TO THOMAS S. HINDE. MAD. MSS.

MONTPR Aug. 17 1829.

DEAR SIR,—Your letter of July 23 was duly recd. but at a time when I was under an indisposition, remains of which are still upon me. I know not whence the error originated that I was engaged in writing the history of our Country. It is true that some of my correspondences during a prolonged public life, with other manuscripts connected with important public transactions, are on my files, and may contribute materials for a historical pen. But a regular history of our Country, even during its Revolutionary & Independent character, would be a task forbidden by the age alone at which I returned to private life, and requiring lights on various sub-

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claim or exercise of any power, whatever, on the part of the General Government, to protect domestic manufactures, the protection of manufactures not being amongst the grants of power to that government specified in the constitution of the U. States,—and also against the operations of the Act of Congress, passed May 22., 1824, entitled 'An Act to amend the several acts imposing duties on imports' generally called the tariff law, which vary the distribution of the proceeds of the labour of the community, in such a manner as to transfer property from one portion of the United States to another, and to take private property from the owner for the benefit of another person, not rendering public service,—as unconstitutional, unwise, unjust, unequal and oppressive."

The third:—"That this General Assembly of Virginia, actuated by the desire of guarding the constitution from all violation, anxious to preserve and perpetuate the Union and to execute with fidelity the trust reposed in it by the people, as one of the high contracting parties, feels itself bound to declare, and it hereby most solemnly declares its deliberate conviction that the acts of Congress usually denominated the tariff laws passed avowedly for the protection of American manufactures are not authorized by the plain construction true intent and meaning of the constitution."—*Mad. MSS.*

jects, w^ch. are gradually to be drawn from sources not yet opened for public use. The friendly tone of your letter has induced me to make these explanatory remarks; which being meant for yourself only, I must request may be so considered.

The authentic facts which it appears you happen to possess relating to the criminal enterprise in the west during the administration of Mr. Jefferson, must merit preservation as belonging to a history of that period; and if no repository more eligible occurs to you, a statement of them may find a place among my political papers. The result of that enterprise is among the auspicious pledges given by the genius of Republican institutions & the spirit of a free people, for future triumphs over dangers of every sort that may be encountered in our national career.

I cannot be insensible to the motives which prompted the too partial views you have taken of my public services; and which claim from me the good wishes which I tender you.

TO JOSEPH C. CABELL. MAD. MSS.

MONTP^R. Sept^r 7 1829.

DEAR SIR,—I rec^d. on the evening of Friday your two letters of Aug^t 30 & Sep^r 1, with the copy of the Virg^a. proceedings in 98–99, and the letters of "Hampden."

When I looked over your manuscript pamphlet. lately returned to you, my mind did not advert to a discrepancy in your recorded opinions, nor to the popularity of the rival jurisdiction claimed by the

Court of Appeals. Your exchange of a hasty opinion for one resulting from fuller information & matured reflection, might safely defy animadversion. But it is a more serious question how far the advice of the two friends you have consulted, founded on the unanimous claim of the Court having Judge Roane at its head, ought to be disregarded; or how far it might be expedient in the present temper of the Country, to mingle that popular claim w^th.^ the Tariff heresy, which is understood to be tottering in the public opinion, & to which your observations & references are calculated to give a very heavy blow. It were to be wished that the two Judges [Cabell & Coalter] cou'd read your manuscript, and then decide on its aptitude for public use. Would it be impossible so to remould the Essay as to drop what might be offensive to the opponents of the necessary power of the Supreme Court of the U. States, but who are sound as to the Tariff power; retaining only what relates to the Tariff; or, at most, to the disorganizing doctrine which asserts a right in every State to withdraw itself from the Union. Were this a mere league, each of the parties would have an equal right to expound it; and of course, there would be as much right in one to insist on the bargain, as in another to renounce it. But the Union of the States is, according to the Virg^a.^ doctrine in 98–99, a *Constitutional Union;* and the right to judge *in the last resort*, concerning usurpations of power, affecting the validity of the Union, referred by that doctrine to the parties to the compact. On recurring to original

principles, and to extreme cases, a single State might indeed be so oppressed as to be justified in shaking off the yoke; so might a single county of a State be, under an extremity of oppression. But until such justifications can be pleaded, the compact is obligatory in both cases. It may be difficult to do full justice to this branch of the subject, without involving the question between the State and Federal Judiciaries: But I am not sure that the plan of your pamphlet will not admit a separation. On this supposition, it might be well, as soon as the Tariff fever shall have spent itself, to take up both the Judicial & the anti-union heresies; on each of which you will have a field for instructive investigation, with the advantage of properly connecting them in their bearings. ☞ A political system that does not provide for a peaceable and effectual decision of all controversies arising among the parties is not a Government, but a mere Treaty between independent nations, without any resort for terminating disputes but negotiation, and that failing, the sword. That the system of the U. States, is what it professes to be, a real Govern$^{t.}$ and not a nominal one only, is proved by the fact that it has all the practical attributes & organs of a real tho' limited Gov$^{t.}$; a Legislative, Executive, & Judicial Department, with the physical means of executing the particular authorities assigned to it, on the individual citizens, in like manner as is done by other Govern$^{ts.}$ Those who would substitute negociation for Governmental authority, and rely on the former as an adequate resource,

forget the essential difference between disputes to be settled by two Branches of the same Gov^t. as between the House of Lords & Commons in England, or the Senate & H. of Representatives here; and disputes between different Gov^ts. In the former case, as neither party can act without the other, necessity produces an adjustment. In the other case, each party having in a Legislative, Executive, & Judicial Department of its own, the compleat means of giving an independent effect to its will, no such necessity exists; and physical collisions are the natural result of conflicting pretensions.

In the years 1819 & 1821, I had a very cordial correspondence with the author of "Hampden" & "Algernon Sydney," [Judge Roane.][1] Although we agreed generally in our views of certain doctrines of the Supreme Court of the U. S. I was induced in my last letter to touch on the necessity of a definitive power on questions between the U. S. and the individual States, and the necessity of its being lodged in the former, where alone it could preserve the essential uniformity. I received no answer, which, indeed, was not required, my letter being an answer.

I shall return the printed pamphlet as soon as I have read the letters of "Hampden" making a part of it.

I have not the acts of the Sessions in question; & will thank you, when you have the opportunity to examine the Preambles to the polemic Resolutions

[1] *Ante* Vol. VIII, p. 447.

of the Assembly, & let me know whether or not they present an Inconsistency. If I mistake not, Governor Tylers message emphatically denounced all imposts on commerce not *exclusively* levied for the purposes of *revenue*.

I return the letter of Mr. Morris, inclosed in yours rec$^{d.}$ some time ago. M$^{r.}$ Pollard ought to have been at no loss for my wish to ascertain the authorship of "The danger not over," the tendency, if not the object of the republication, with the suggestion that I had a hand in the paper, being to shew an inconsistency between my opinion then & now on the subject of the Tariff power. It may not be amiss to receive the further explanations of Mr. Pollard. But I learn from Mr. Robert Taylor, who was a student of law at the time with Mr. Pendleton, that he saw a letter to him from Mr. Jefferson expressing a desire that he would take up his pen at the crisis; but without, as Mr. Taylor recollects, furnishing any particular ideas for it, or naming me on the occasion. I believe a copy of the letter is among Mr. Jefferson's papers, and that it corresponds with Mr. T's account of it.

I comply with your request to destroy your two letters; and, as this has been written in haste and with interruptions of company, it will be best disposed of in the same way. Some of the passages in it called for more consideration & precision than I could bestow on them.

P. S. Since the above was written, I have rec$^{d.}$

yours of the 3d. inst. There could not be a stronger proof of the obscurity of the passage it refers to than its not being intelligible to you. Its meaning is expressed in the slip of paper inclosed. The passage may be well eno' dispensed with, as being developed in that marked above by.☞

Copy of the slip: Note that there can of course be no regular Arbiter or Umpire, under any Governmental system, applicable to those extreme cases, or questions of passive obedience & non-resistence, which justify & require a resort to the original rights of the parties to the system or compact; but that in all cases not of that extreme character, there is & must be an Arbiter or Umpire in the constitutional authority provided for deciding questions concerning the boundaries of right & power. The particular provision, in the Constitution of the U. S. is in the authority of the Supreme Court, as stated in the "Federalist," No. 39.

OUTLINE. MAD. MSS.

Sepr. 1829.

The compound Govt of the U. S. is without a model, and to be explained by itself, not by similitudes or analogies. The terms Union, Federal, National not to be applied to it without the qualifications peculiar to the system. The English Govt is in a great measure sui generis, and the terms Monarchy used by those who look at the executive head only, and Commonwealth, by those looking at the representative member chiefly, are inapplicable in a strict sense.

A fundamental error lies in supposing the State Governments to be the parties to the Constitutional compact from which the Govt. of the U. S. results.

It is a like error that makes the General Govt. and the State governments the parties to the compact, as stated in the 4th. letter of "Algernon Sidney," [Judge Roane]. They may be parties in a judicial controversy, but are not so in relation to the original constitutional compact.

In Nº XI of "Retrospects," [by Govr Giles], in the Richmond Enquirer of Sept. 8, 1829, Mr. Jefferson is misconstrued, or rather *mistated*, as making the State Govts. & the Govt of the U. S. *foreign* to each other; the evident meaning, or rather the express language of Mr. J, being "the *States* are foreign to each other, in the portions of sovereignty not granted, as they were in the entire sovereignty before the grant," and not that the State Govts. and the Govt. of the U. S. are foreign to each other. As the State Govts. participate in appointing the Functionaries of the Genl Govt. it can no more be said that they are altogether foreign to each other, than that the people of a State & its Govt. are foreign.

The real parties to the constl. compact of the U. S. are the *States*—that is, the people thereof respectively in their sovereign character, and they *alone*, so declared in the Resolutions of 98, and so explained in the Report of 99. In these Resolutions as originally proposed, the word *alone*, wch. guarded agst. error on this point, was struck out, [see printed debates of 98] and led to misconceptions & misreasonings concerning the true character of the pol: system, and to the idea that it was a compact between the Govts. of the States and the Govt. of the U. S. an idea promoted by the familiar one applied to Govts. independent of the people, particularly the British, of [?] a compact between the monarch & his subjects, pledging protection on one side & allegiance on the other.

The plain fact of the case is that the Constitution of the U. S. was created by the people composing the respective States, who alone had the right; that they organized the Govt. into Legis. Ex. & Judicy. departs. delegating thereto certain portions of power to be exercised over the whole, and reserving the other portions to themselves respectively. As

these distinct portions of power were to be exercised by the General Govt. & by the State Govts; by each within limited spheres; and as of course controversies concerning the boundaries of their power wd. happen, it was provided that they should be decided by the Supreme Court of the U. S. so constituted as to be as impartial as it could be made by the mode of appointment & responsibility for the Judges.

Is there then no remedy for usurpations in which the Supreme Ct. of the U. S. concur? Yes: constitutional remedies such as have been found effectual; particularly in the case of alien & sedition laws, and such as will in all cases be effectual, whilst the responsiblity of the Genl. Govt to its constituents continues:—Remonstrances & instructions—recurring elections & impeachments; amendt. of Const. as provided by itself & exemplified in the 11th article limiting the suability of the States.

These are resources of the States agst. the Genl. Govt: resulting from the relations of the States to that Govt.: whilst no corresponding controul exists in the relations of the Genl to the individual Govts. all of whose functionaries are independent of the United States in their appt. and responsibility.

Finally should all the constitutional remedies fail, and the usurpations of the Genl. Govt. become so intolerable as absolutely to forbid a longer passive obedience & non-resistance, a resort to the original rights of the parties becomes justifiable; and redress may be sought by shaking off the yoke, as of right, might be done by part of an individual State in a like case; or even by a single citizen, could he effect it, if deprived of rights absolutely essential to his safety & happiness. In the defect of their ability to resist, the individual citizen may seek relief in expatriation or voluntary exile[1] a resort not within the reach of large portions of the community.

In all the views that may be taken of questions between the

[1] See letter to N. P. Trist; and see also the distinction between an expatriating individual withdrawing only his person and moveable effects, and the withdrawal of a State mutilating the domain of the Union.—*Madison's Note.*

State Gov^ts. & the Gen^l. Gov^t. the awful consequences of a final rupture & dissolution of the Union sh^d. never for a moment be lost sight of. Such a prospect must be deprecated, must be shuddered at by every friend to his country, to liberty,

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The Virginia Expatriation Act was that of October, 1783, Sec. III. Hening's *Stats. at Large*, XI, 325. The letter to Trist was dated February 15, 1830.

It has been too much the case in expounding the Constitution of the U. S. that its meaning has been sought not in its peculiar and unprecedented modifications of Power; but by viewing it, some through the medium of a simple Gov^t. others thro' that of a mere League of Gov^ts. It is neither the one nor the other; but essentially different from both. It must consequently be its own interpreter. No other Government can furnish a key to its true character. Other Governments present an individual & indivisible sovereignty. The Constitution of the U. S. divides the sovereignty; the portions surrendered by the States, composing the Federal sovereignty over specified subjects; the portions retained forming the sovereignty of each over the residuary subjects within its sphere. If sovereignty cannot be thus divided, the Political System of the United States is a chimæra, mocking the vain pretensions of human wisdom. If it can be so divided, the system ought to have a fair opportunity of fulfilling the wishes & expectations which cling to the experiment.

Nothing can be more clear than that the Constitution of the U. S. has created a Government, in as strict a sense of the term, as the Governments of the States created by their respective Constitutions. The Federal Gov^t. has like the State gov^ts. its Legislative, its Executive & its Judiciary Departments. It has, like them, acknowledged cases in which the powers of these departments are to operate. And the operation is to be directly on persons & things in the one Gov^t. as in the others. If in some cases, the jurisdiction is concurrent as it is in others exclusive, this is one of the features constituting the peculiarity of the system.

In forming this compound scheme of Government it was impossible to lose sight of the question, what was to be done in the event of controversies which could not fail to occur, concerning the partition line, between the powers belonging to the Federal and to the State Gov^ts. That some provision ought to be made, was as obvious and as essential, as the task itself was difficult and delicate.

That the final decision of such controversies, if left to each of the 13 now 24 members of the Union, must produce a different Constitution & different laws in the States was certain; and that such differences

to the happiness of man. For, in the event of a dissolution of the Union, an impossibility of ever renewing it is brought home to every mind by the difficulties encountered in establishing it. The propensity of all communities to divide when

must be destructive of the common Govt. & of the Union itself, was equally certain. The decision of questions between the common agents of the whole & of the parts, could only proceed from the whole, that is from a collective not a separate authority of the parts.

The question then presenting itself could only relate to the least objectionable mode of providing for such occurrences, under the collective authority.

The provision immediately and ordinarily relied on, is manifestly the Supreme Court of the U. S., clothed as it is, with a Jurisdiction "in controversies to which the U. S. shall be a party;" the Court itself being so constituted as to render it independent & impartial in its decisions; [see Federalist, No. 39, p. 241] whilst other and ulterior resorts would remain in the elective process, in the hands of the people themselves the joint constituents of the parties; and in the provision made by the Constitution for amending itself. All other resorts are extra & ultra constitutional, corresponding to the Ultima Ratio of nations renouncing the ordinary relations of peace.

If the Supreme Court of the U. S. be found or deemed not sufficiently independent and impartial for the trust committed to it, a better Tribunal is a desideratum: But whatever this may be, it must necessarily derive its authority from the whole not from the parts, from the States in some collective not individual capacity. And as some such Tribunal is a vital element, a sine qua non, in an efficient & permanent Govt. the Tribunal existing must be acquiesced in, until a better or more satisfactory one can be substituted.

Altho' the old idea of a compact between the Govt. & the people be justly exploded, the idea of a compact among those who are parties to a Govt. is a fundamental principle of free Govt.

The original compact is the one implied or presumed, but nowhere reduced to writing, by which a people agree to form one society. The next is a compact, here for the first time reduced to writing, by which the people in their social state agree to a Govt. over them. These two compacts may be considered as blended in the Constitution of the U. S., which recognises a union or society of States, and makes it the basis of the Govt. formed by the parties to it.

It is the nature & essence of a compact that it is equally obligatory on the parties to it, and of course that no one of them can be liberated therefrom without the consent of the others, or such a violation or

not pressed into a unity by external danger, is a truth well understood. *There is no instance of a people inhabiting even a small island, if remote from foreign danger, and sometimes in spite of that pressure, who are not divided into alien, rival, hostile*

abuse of it by the others, as will amount to a dissolution of the compact.

Applying this view of the subject to a single community, it results, that the compact being between the individuals composing it, no individual or set of individuals can at pleasure, break off and set up for themselves, without such a violation of the compact as absolves them from its obligations. It follows at the same time that, in the event of such a violation, the suffering party rather than longer yield a passive obedience may justly shake off the yoke, and can only be restrained from the attempt by a want of physical strength for the purpose. The case of individuals expatriating themselves, that is leaving their country in its *territorial* as well as its social & political sense, may well be deemed a reasonable privilege, or rather as a right impliedly reserved. And even in this case equitable conditions have been annexed to the right which qualify the exercise of it.

Applying a like view of the subject to the case of the U. S. it results, that the compact being among individuals as imbodied into States, no State can at pleasure release itself therefrom, and set up for itself. The compact can only be dissolved by the consent of the other parties, or by usurpations or abuses of power justly having that effect. It will hardly be contended that there is anything in the terms or nature of the compact, authorizing a party to dissolve it at pleasure.

It is indeed inseparable from the nature of a compact, that there is as much right on one side to expound it & to insist on its fulfilment according to that exposition, as there is on the other so to expound it as to furnish a release from it; and that an attempt to annul it by one of the parties, may present to the other, an option of acquiescing in the annulment, or of preventing it as the one or the other course may be deemed the lesser evil. This is a consideration which ought deeply to impress itself on every patriotic mind, as the strongest dissuasion from unnecessary approaches to such a crisis. What would be the condition of the States attached to the Union & its Gov$^{t.}$ and regarding both as essential to their well-being, if a State placed in the midst of them were to renounce its Federal obligations, and erect itself into an independent and alien nation? Could the States N. & S. of Virginia, Pennsyl$^{a.}$ or N. York, or of some other States however small, remain associated and enjoy their present happiness, if geographically politically and practically thrown apart by such a breach in the chain which unites their interests and binds them together as neighbours & fellow

tribes. The happy Union of these States is a wonder; their Const^{n} a miracle; their example the hope of Liberty throughout the world. Woe to the ambition that would meditate the destruction of either!

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citizens. It could not be. The innovation would be fatal to the Federal Govern^{t} fatal to the Union, and fatal to the hopes of liberty and humanity; and presents a catastrophe at which all ought to shudder.

Without identifying the case of the U. S. with that of individual States, there is at least an instructive analogy between them. What would be the condition of the State of N. Y. of Mass^{ts} or of Pen^{a} for example, if portions containing their great commercial cities, invoking original rights as paramount to social & constitutional compacts, should erect themselves into distinct & absolute sovereignties? In so doing they would do no more, unless justified by an intolerable oppression, than would be done by an individual State as a portion of the Union, in separating itself, without a like cause, from the other portions. Nor would greater evils be inflicted by such a mutilation of a State of some of its parts, than might be felt by some of the States from a separation of its neighbours into absolute and alien sovereignties.

Even in the case of a mere League between nations absolutely independent of each other, neither party has a right to dissolve it at pleasure; each having an equal right to expound its obligations, and neither, consequently a greater right to pronounce the compact void than the other has to insist on the mutual execution of it. [See, in Mr. Jefferson's volumes, his letters to J. M. Mr. Monroe & Col. Carrington]

Having suffered my pen to take this ramble over a subject engaging so much of your attention, I will not withhold the notes made by it from your persual. But being aware that without more development & precision, they may in some instances be liable to misapprehension or misconstruction, I will ask the favour of you to return the letter after it has passed under your partial & confidential eye.

I have made no secret of my surprize and sorrow at the proceedings in S. Carolina, which are understood to assert a right to annul the Acts of Congress within the State, & even to secede from the Union itself. But I am unwilling to enter the political field with the "telum imbelle" which alone I could wield. The task of combating such unhappy aberrations belongs to other hands. A man whose years have but reached the canonical three-score-&-ten (and mine are much beyond the number) should distrust himself, whether distrusted by his friends

SPEECH IN THE VIRGINIA CONSTITUTIONAL CONVENTION.[1]

December 2, 1829.

Although the actual posture of the subject before the Committee might admit a full survey of it, it is not my purpose, in rising, to enter into the wide field of discussion, which has called forth a display of intellectual resources and varied powers of eloquence, that any country might be proud of,

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or not, and should never forget that his arguments, whatever they may be will be answered by allusions to the date of his birth.

With affect. respects,

[1] From *Proceedings and Debates of the Virginia State Convention of 1829–30*. Richmond, 1830. In 1827–28 the people of the State voted in favor of holding a State convention to revise the constitution and Madison accepted service as a delegate, this being his last public employment. He made but one speech, although he offered several motions. The question before the convention was the qualification for suffrage. The report says: "Mr. Madison now rose and addressed the Chair: The members rushed from their seats, and crowded around him."

He made the following memorandum suggested by the question. (See also *ante*, Vol. IV., pp. 120, 121, n.)

NOTE DURING THE CONVENTION FOR AMENDING THE CONSTITUTION OF VIRGINIA.

The right of suffrage being of vital importance, and approving an extension of it to House keepers & heads of families, I will suggest a few considerations which govern my judgment on the subject.

Were the Constitution on hand to be adapted to the present circumstances of our Country, without taking into view the changes which time is rapidly producing, an unlimited extension of the right wd probably vary little the character of our public councils or measures. But as we are to prepare a system of Govt. for a period which it is hoped will be a long one, we must look to the prospective changes in the condition and composition of the society on which it is to act.

It is a law of nature, now well understood, that the earth under a civilized cultivation is capable of yielding subsistence for a large surplus of consumers, beyond those having an immediate interest in the soil; a surplus which must increase with the increasing improvements in agriculture, and the labor-saving arts applied to it. And it is a lot of humanity that of this surplus a large proportion is necessarily reduced by a competition for employment to wages which afford

and which I have witnessed with the highest gratification. Having been, for a very long period, withdrawn from any participation in proceedings of deliberative bodies, and under other disqualifications now of which I am deeply sensible, though perhaps less sensible than others may perceive that I ought to be, I shall not attempt more than a few observations,

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them the bare necessaries of life. That proportion being without property, or the hope of acquiring it, can not be expected to sympathize sufficiently with its rights, to be safe depositories of power over them.

What is to be done with this unfavored class of the community? If it be, on one hand, unsafe to admit them to a full share of political power, it must be recollected, on the other, that it cannot be expedient to rest a Republican Govt. on a portion of the society having a numerical & physical force excluded from, and liable to be turned against it; and which would lead to a standing military force, dangerous to all parties & to liberty itself.

This view of the subject makes it proper to embrace in the partnership of power, every description of citizens having a sufficient stake in the public order, and the stable administration of the laws; and particularly the House keepers & Heads of families; most of whom "having given hostages to fortune," will have given them to their Country also.

This portion of the community, added to those, who although not possessed of a share of the soil, are deeply interested in other species of property, and both of them added to the territorial proprietors, who in a certain sense may be regarded as the owners of the Country itself, form the safest basis of free Government. To the security for such a Govt. afforded by these combined numbers, may be further added, the political & moral influence emanating from the actual possession of authority and a just & beneficial exercise of it.

It would be happy if a State of Society could be found or framed, in which an equal voice in making the laws might be allowed to every individual bound to obey them. But this is a Theory, which like most Theories, confessedly requires limitations & modifications, and the only question to be decided in this as in other cases, turns on the particular degree of departure, in practice, required by the essence & object of the Theory itself.

It must not be supposed that a crowded state of population, of which we have no example here, and which we know only by the image reflected from examples elsewhere, is too remote to claim attention.

The ratio of increase in the U. S. shows that the present

which may suggest the views I have taken of the subject, and which will consume but little of the time of the Committee, become precious. It is sufficiently obvious, that persons now and property are the two great subjects on which Governments are to act; and that the rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted. These rights cannot well be

12	Millions	will	in	25	years	be	24	Mils.
24	"	"	"	50	"	"	48	"
48	"	"	"	75	"	"	96	"
96	"	"	"	100	"	"	192	"

There may be a gradual decrease of the rate of increase: but it will be small as long as agriculture shall yield its abundance. G. Britain has doubled her population in the last 50 years; notwithstanding its amount in proportion to its territory at the commencement of that period, and Ireland is a much stronger proof of the effect of an increasing product of food, in multiplying the consumers.

How far this view of the subject will be affected by the Republican laws of descent and distribution, in equalizing the property of the citizens and in reducing to the minimum mutual surplusses for mutual supplies, cannot be inferred from any direct and adequate experiment. One result would seem to be a deficiency of the capital for the expensive establishments which facilitate labour and cheapen its products on one hand, and, on the other, of the capacity to purchase the costly and ornamental articles consumed by the wealthy alone, who must cease to be idlers and become labourers. Another the increased mass of labourers added to the production of necessaries by the withdrawal for this object, of a part of those now employed in producing luxuries, and the addition to the labourers from the class of present consumers of luxuries. To the effect of these changes, intellectual, moral, and social, the institutions and laws of the Country must be adapted, and it will require for the task all the wisdom of the wisest patriots.

Supposing the estimate of the growing population of the U. S. to be nearly correct, and the extent of their territory to be 8 or 9 hundred Mil^{s} of acres, and one fourth of it to consist of inarable surface, there will in a century or a little more, be nearly as crowded a population in the U. S. as in G. Britain or France, and if the present Constitution (of Virginia) with all its flaws, lasted more than half a century, it is not an unreasonable hope that an amended one will last more than a century.

If these observations be just, every mind will be able to develop & apply them.—Mad. MSS.

separated. The personal right to acquire property, which is a natural right, gives to property, when acquired, a right to protection, as a social right. The essence of Government is power; and power, lodged as it must be in human hands, will ever be liable to abuse. In monarchies, the interests and happiness of all may be sacrificed to the caprice and passions of a despot. In aristocracies, the rights and welfare of the many may be sacrificed to the pride and cupidity of the few. In republics, the great danger is, that the majority may not sufficiently respect the rights of the minority. Some gentlemen, consulting the purity and generosity of their own minds, without adverting to the lessons of experience, would find a security against that danger, in our social feelings; in a respect for character; in the dictates of the monitor within; in the interests of individuals; in the aggregate interests of the community. But man is known to be a selfish, as well as a social being. Respect for character, though often a salutary restraint, is but too often overruled by other motives. When numbers of men act in a body, respect for character is often lost, just in proportion as it is necessary to control what is not right. We all know that conscience is not a sufficient safe-guard; and besides, that conscience itself may be deluded; may be misled, by an unconscious bias, into acts which an enlightened conscience would forbid. As to the permanent interest of individuals in the aggregate interests of the community, and in the proverbial maxim, that honesty is the best policy, present temptation is often found to be an overmatch for those considerations. These favourable attributes of the human character are all valuable, as auxiliaries; but they will not serve as a substitute for the coercive provision belonging to Government and Law. They will always, in proportion as they prevail, be favourable to a mild administration of both: but they can never be relied on as a guaranty of the rights of the minority against a majority disposed to take unjust advantage of its power. The only effectual safeguard to the rights of the minority, must be laid in such a basis and structure of the Government itself, as may afford,

in a certain degree, directly or indirectly, a defensive authority in behalf of a minority having right on its side.

To come more nearly to the subject before the Committee, viz.: that peculiar feature in our community, which calls for a peculiar division in the basis of our government, I mean the coloured part of our population. It is apprehended, if the power of the Commonwealth shall be in the hands of a majority, who have no interest in this species of property, that, from the facility with which it may be oppressed by excessive taxation, injustice may be done to its owners. It would seem, therefore, if we can incorporate that interest into the basis of our system, it will be the most apposite and effectual security that can be devised. Such an arrangement is recommended to me by many very important considerations. It is due to justice; due to humanity; due to truth; to the sympathies of our nature; in fine, to our character as a people, both abroad and at home, that they should be considered, as much as possible, in the light of human beings, and not as mere property. As such, they are acted upon by our laws, and have an interest in our laws. They may be considered as making a part, though a degraded part, of the families to which they belong.

If they had the complexion of the Serfs in the North of Europe, or of the Villeins formerly in England; in other terms, if they were of our own complexion, much of the difficulty would be removed. But the mere circumstance of complexion cannot deprive them of the character of men. The Federal number, as it is called, is particularly recommended to attention in forming a basis of Representation, by its simplicity, its certainty, its stability, and its permanency. Other expedients for securing justice in the case of taxation, while they amount in pecuniary effect, to the same thing, have been found liable to great objections: and I do not believe that a majority of this Convention is disposed to adopt them, it they can find a substitute they can approve. Nor is it a small recommendation of the Federal number, in my view, that it is in conformity to the ratio recognized in the Federal Constitution. The cases, it is true, are not precisely the same,

but there is more of analogy than might at first be supposed. If the coloured population were equally diffused through the State, the analogy would fail; but existing as it does, in large masses, in particular parts of it, the distinction between the different parts of the State, resembles that between the slave-holding and non-slave-holding States: and, if we reject a doctrine in our own State, whilst we claim the benefit of it in our relations to other States, other disagreeable consequences may be added to the charge of inconsistency, which will be brought against us. If the example of our sister States is to have weight, we find that in Georgia, the Federal number is made the basis of Representation in both branches of their Legislature; and I do not learn, that any dissatisfaction or inconvenience has flowed from its adoption. I wish we could know more of the manner in which particular organizations of Government operate in other parts of the United States. There would be less danger of being misled into error, and we should have the advantage of their experience, as well as our own. In the case I mention, there can, I believe, be no error.

Whether, therefore, we be fixing a basis of Representation, for the one branch or the other of our Legislature, or for both, in a combination with other principles, the Federal ratio is a favourite resource with me. It entered into my earliest views of the subject, before this Convention was assembled: and though I have kept my mind open, have listened to every proposition which has been advanced, and given to them all a candid consideration, I must say, that in my judgment, we shall act wisely in preferring it to others, which have been brought before us. Should the Federal number be made to enter into the basis in one branch of the Legislature, and not into the other, such an arrangement might prove favourable to the slaves themselves. It may be, and I think it has been suggested, that those who have themselves no interest in this species of property, are apt to sympathise with the slaves, more than may be the case with their masters; and would, therefore, be disposed, when they had the ascendancy, to

protect them from laws of an oppressive character, whilst the masters, who have a common interest with the slaves, against undue taxation, which must be paid out of their labour, will be their protectors when they have the ascendancy.

The Convention is now arrived at a point, where we must agree on some common ground, all sides relaxing in their opinions, not changing, but mutually surrendering a part of them. In framing a Constitution, great difficulties are necessarily to be overcome; and nothing can ever overcome them, but a spirit of compromise. Other nations are surprised at nothing so much as our having been able to form Constitutions in the manner which has been exemplified in this country. Even the union of so many States, is, in the eyes of the world, a wonder; the harmonious establishment of a common Government over them all, a miracle. I cannot but flatter myself, that without a miracle, we shall be able to arrange all difficulties. I never have despaired, notwithstanding all the threatening appearances we have passed through. I have now more than a hope—a consoling confidence, that we shall at last find, that our labours have not been in vain.

TO GEORGE McDUFFIE.[1]

MONTPELLIER, May 8, 1830.

DEAR SIR

I have recd. a copy of the late Report, on the Bank of the U. S. and finding by the name on the envelope, that I am indebted for the communication to your politeness, I tender you my thanks for it.[2] The document contains very inter-

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[1] Copy of the original kindly contributed by W. H. Gibbes, Esq., of Columbia, S. C.

[2] The report was introduced in the House by McDuffie, April 13. It may be found in Cong. Debates, 21st Cong. 1st Session, p. 103, appendix.

esting & instructive views of the subject; particularly of the objectionable features in the substitute proposed for the existing Bank.

I am glad to find that the Report sanctions the sufficiency of the course and character of the precedents which I had regarded as overruling individual judgments in expounding the Constitution. You are not aware perhaps of a circumstance, weighing against the plea that the chain of precedents was broken by the negative on a Bank bill by the casting vote of the President of the Senate, given expressly on the ground that the Bill was not authorized by the Constitution. The circumstance alluded to is that the equality of votes which threw the casting one on the Chair, was the result of a union of a number of members who objected to the expediency only of the Bill, with those who opposed it on constitutional grounds. On a naked question of constitutionality, it was understood that there would have been a majority who made no objection on that score, [the journal of the Senate may yet test the fact.]

Will you permit me Sir to suggest for consideration whether the Report (pg.–10) in the position & reasoning applied to the effect of a change in the quantity on the value of a currency, sufficiently distinguishes between a special currency, and a currency not convertible into specie. The latter being of local circulation only, unless the local use for it increase or diminish, with the increase or decrease of its quantity, [will] be changeable in its value, as the

quantity of the currency changes. The metals on the other hand, having a universal currency, would not be equally affected by local changes in their circulating amount, a surplus producing a proportional depreciation at home, might bear the expense of transportation, and avail itself of its current value abroad.

If I have misconceived the meaning of the Report, you will be good enough to pardon the error, and to accept, with a repetition of my thanks, assurances of my great & cordial respect.

TO JAMES HILLHOUSE. MAD. MSS.

MONTP^{R} MAY 1830.

DEAR SIR—I have received your letter of the 10th inst: with the pamphlet containing the proposed amendments of the Constitution of the U. States, on which you request my opinion & remarks.[1]

Whatever pleasure might be felt in a fuller compliance with your request, I must avail myself of the pleas of the age I have reached, and of the controul of other engagements, for not venturing on more than the few observations suggested by a perusal of what you have submitted to the public.

I readily acknowledge the ingenuity which devised the plan you recommend, and the strength of reason-

[1] The pamphlet was: *Propositions for amending the Constitution of the United States, providing for the election of President and Vice-President, and guarding against the undue exercise of Executive influence, patronage and power.* Washington, 1830. It was a revival of Hillhouse's proposed amendments to the constitution offered in the Senate in 1808.

ing with which you support it. I cannot however but regard it as liable to the following remarks:

1. The first that occurs is, that the large States would not exchange the proportional agency they now have in the appointment of the Chief Magistrate, for a mode placing the largest & smallest States on a perfect equality in that cardinal transaction. N. York has in it, even now more than 13 times the weight of several of the States, and other States according to their magnitudes w^d^ decide on the change with correspondent calculations & feelings.

The difficulty of reconciling the larger States to the equality in the Senate is known to have been the most threatning that was encountered in framing the Constitution. It is known also that the powers committed to that body, comprehending, as they do, Legislative, Ex. & Judicial functions, was among the most serious objections, with many, to the adoption of the Constitution.

2. As the President elect would generally be without any previous evidence of national confidence, and have been in responsible relations only to a particular State, there might be danger of State partialities, and a certainty of injurious suspicions of them.

3. Considering the ordinary composition of the Senate, and the number (in a little time nearly 50) out of which a single one was to be taken by pure chance; it must often happen, that the winner of the prize would want some of the qualities necessary to command the respect of the nation, and possibly be

marked with some of an opposite tendency. On a review of the composition of that Body thro' the successive periods of its existence, (antecedent to the present which may be an exception) how often will names present themselves, which would be seen with mortified feelings at the head of the nation. It might happen, it is true, that, in the choice of Senators, an eventual elevation to that important trust might produce more circumspection in the State Legislatures. But so remote a contingency could not be expected to have any great influence; besides that there might be States not furnishing at the time, characters which would satisfy the pride and inspire the confidence of the States & of the People.

4. A President not appointed by the nation and without the weight derived from its selection & confidence, could not afford the advantage expected from the qualified negative on the act of the Legislative branch of the Gov^{t} He might either shrink from the delicacy of such an interposition, or it might be overruled with too little hesitation by the body checked in its career.

5. In the vicissitudes of party, adverse views & feelings will exist between the Senate & President. Under the amendments proposed, a spirit of opposition in the former to the latter would probably be more frequent than heretofore. In such a state of things, how apt might the Senate be to embarrass the President, by refusing to concur in the removal of an obnoxious officer; how prone would be a refrac-

tory officer, having powerful friends in the Senate, to take shelter under that authority, & bid defiance to the President; and, with such discord and anarchy in the Ex. Department, how impaired would be the security for a due execution of the Laws!

6. On the supposition that the above objection would be overbalanced by the advantage of reducing the power and the patronage now attached to the Presidential office; it has generally been admitted, that the Heads of Dep^{ts} at least who are at once the associates & the organs of the Chief Magistrate, ought to be well disposed towards him, and not independent of him. What would be the situation of the President, and what might be the effect on the Executive business, if those immediately around him, and in daily consultation with him, could, however adverse to him in their feelings & their views, be fastened upon him, by a Senate disposed to take side with them? The harmony so expedient between the P. & Heads of Departments, and among the latter themselves, has been too liable to interruption under an organization apparently so well providing against it.

I am aware that some of these objections might be mitigated, if not removed; but not I suspect in a degree to render the proposed modification of the Executive Department an eligible substitute for the one existing. At the same time, I am duly sensible of the evils incident to the existing one, and that a solid improvement of it is a desideratum that ought to be welcomed by all enlightened patriots.

In the mean time, I cannot feel all the alarm you express at the prospect for the future as reflected from the mirror of the past. It will be a rare case that the Presidential contest will not issue in a choice that will not discredit the station, and not be acquiesced in by the unsuccessful party, foreseeing, as it must do, the appeal to be again made at no very distant day to the will of the nation. As long as the country shall be exempt from a military force powerful in itself and combined with a powerful faction, liberty & peace will find safeguards in the elective resource and the spirit of the people. The dangers which threaten our political system least remote are perhaps of other sorts and from other sources.

I will only add to these remarks, what is indeed sufficiently evident, that they are too hasty & too crude for any other than a private, and that an indulgent eye.

Mrs. M. is highly gratified by your kind expressions towards her, & begs you to be assured that she still feels for you that affectionate friendship with which you impressed her many years ago. Permit me to join her in best wishes for your health & every other happiness.

TO M. L. HURLBERT. MAD. MSS.

MONTP^{R} May 1830.

I rec^{d} Sir, tho' not exactly in the due time, your letter of April 25, with a copy of your pamphlet, on the subject of which you request my opinions.

With a request opening so wide a field, I could not undertake a full compliance, without forgetting the age at which it finds me, and that I have other engagements precluding such a task. I must hope therefore you will accept in place of it, a few remarks which tho' not adapted to the use you had contemplated, may manifest my respect for your wishes, and for the subject which prompted them.

The pamphlet certainly evinces a very strong pen, & talents adequate to the discussion of constitutional topics of the most interesting class. But in doing it this justice, and adding with pleasure, that it contains much matter with which my views of the Constitution of the U. S. accord; I must add also that it contains views of the Constitution from which mine widely differ.

I refer particularly to the construction you seem to put on the introductory clause "We the people" and on the phrases "common defence & genl welfare." Either of these, if taken as a measure of the powers of the Genl Govt would supersede the elaborated specifications which compose the Body of the Instrument, in contravention to the fairest rules of interpretation. And if I am to answer your appeal to me as a witness, I must say that the real measure of the powers meant to be granted to Congress by the Convention, as I understood and believe, is to be sought in the specifications, to be expounded indeed not with the strictness applied to an ordinary statue by a Court of Law; nor on the other hand with a latitude that under the name of

means for carrying into execution a limited Government, would transform it into a Government without limits.

But whatever respect may be thought due to the intention of the Convention, which prepared & proposed the Constitution, as presumptive evidence of the general understanding at the time of the language used, it must be kept in mind that the only authoritative intentions were those of the people of the States, as expressed thro' the Conventions which ratified the Constitution.

That in a Constitution, so new, and so complicated, there should be occasional difficulties & differences in the practical expositions of it, can surprize no one; and this must continue to be the case, as happens to new laws on complex subjects, until a course of practice of sufficient uniformity and duration to carry with it the public sanction shall settle doubtful or contested meanings.

As there are legal rules for interpreting laws, there must be analogous rules for interpreting const^{ns} and among the obvious and just guides applicable to the Const^{n} of the U. S. may be mentioned—

1. The evils & defects for curing which the Constitution was called for & introduced.

2. The comments prevailing at the time it was adopted.

3. The early, deliberate & continued practice under the Constitution, as preferable to constructions adapted on the spur of occasions, and subject to the vicissitudes of party or personal ascendencies.

On recurring to the origin of the Constitution and examining the structure of the Govt we perceive that it is neither a Federal Govt created by the State Govts like the Revolutionary Congress; nor a consolidated Govt (as that term is now applied,) created by the people of the U. S. as one community, and as such acting by a numerical majority of the whole.

The facts of the case which must decide its true character, a character without a prototype, are that the Constitution was created by the people, but by the people as composing distinct States, and acting by a majority in each:

That, being derived from the same source as the constitutions of the States, it has within each State, the same authority as the Constitution of the State, and is as much a Constitution, in the strict sense of the term, as the constitution of the State:

That, being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it is not revocable or alterable at the will of the States individually, as the constitution of a State is revocable & alterable at its individual will:

That the sovereign or supreme powers of Govt are divided into the separate depositories of the Govt of the U. S. and the Govts of the individual States:

That the Govt of the U. S. is a Govt in as strict a sense of the term, as the Govts of the States; being, like them, organized into Legislative, Execu-

tive & Judiciary dep^{ts} operating, like them, directly on persons & things, and having like them the command of a physical force for executing the powers committed to it:

That the supreme powers of Gov^{t} being divided between different Gov^{ts} and controversies as to the landmarks of jurisdiction being unavoidable, provision for a peaceable & authoritative decision of them was obviously essential:

That, to leave this decision to the States, numerous as they were & with a prospective increase, would evidently result in conflicting decisions subversive of the common Gov^{t} and of the Union itself:

That, according to the actual provision against such calamities, the Constitution & laws of the U. S. are declared to be paramount to those of the individual States, & an appellate supremacy is vested in the Judicial power of the U. S.:

That as safeguards agst usurpations and abuses of power by the Gov^{t} of the U. S. the members of its Legislative and the head of its Executive Department, are eligible by & responsible to, the people of the States or the Legislatures of the States; and as well the Judicial as the Executive functionaries including the head, are impeachable by the Representatives of the people in one branch of the Legislature of the U. S. and triable by the Representatives of the States in the other Branch:

States can, through forms of the const^{l} elective provisions, controul the Gen^{l} Gov^{t} This has no agency in electing State Gov^{ts}, & can only controul

them through the functionaries particularly the Judiciary of the General Government:

That in case of an experienced inadequacy of these provisions, an ulterior resort is provided in amendments attainable by an intervention of the States, which may better adapt the Constitution for the purposes of its creation.

Should all these provisions fail, and a degree of oppression ensue, rendering resistence & revolution a lesser evil than a longer passive obedience, there can remain but the ultima ratio, applicable to extreme cases, whether between nations or the component parts of them.

Such, Sir, I take to be an outline view, tho' an imperfect one, of the pol: system presented in the Constitution of the U. S. Whether it be the best system that might have been devised, or what the improvements that might be made in it, are questions equally beyond the scope of your letter and that of the answer, with which I pray you to accept my respects and good wishes.

TO MARTIN VAN BUREN. MAD. MSS.

MONTPELLIER, June 3, 1830.

J. Madison has duly rec^{d} the copy of the President's Message forwarded by M^{r} Van Buren. In returning his thanks for this polite attention, he regrets the necessity of observing that the Message has not rightly conceived the intention of J. M. in his veto in 1817, on the Bill relating to Internal Improve-

ments. It was an object of the veto to deny to Congress as well the appropriating power, as the executing and jurisdictional branches of it. And it is believed that this was the general understanding at the time, and has continued to be so, according to the references occasionally made to the document. Whether the language employed duly conveyed the meaning of which J. M. retains the consciousness, is a question on which he does not presume to judge for others.

Relying on the candour to which these remarks are addressed, he tenders to M^r. Van Buren renewed assurances of his high esteem & good wishes.

TO MARTIN VAN BUREN. MAD MSS.

MONTPELLIER, July 5, 1830.

DEAR SIR,—Your letter of June 9^th. came duly to hand. On the subject of the discrepancy between the construction put by the message of the President on the veto of 1817, and the intention of its author, the President will of course consult his own view of the case. For myself, I am aware that the document must speak for itself, and that that intention cannot be substituted for the established rules of interpretation.

The several points on which you desire my ideas are necessarily vague, and the observations on them cannot well be otherwise. They are suggested by a respect for your request, rather than by a hope that they can assist the object of it.

"Point 1. The establishment of some rule which shall give the greatest practicable precision to the power of appropriating money to objects of general concern."

The rule must refer, it is presumed, either to the objects of appropriation, or to the apportionment of the money.

A specification of the objects of general concern in terms as definite as may be, seems to be the rule most applicable; thus Roads simply, if for all the uses of Roads; or Roads post and military, if limited to those uses; or post roads only, if so limited: thus, Canals, either generally, or for specified uses: so again Education, as limited to a university, or extended to seminaries of other denominations.

As to the apportionment of the money, no rule can exclude Legislative discretion but that of distribution among the States according to their presumed contributions; that is, to their ratio of Representation in Congress. The advantages of this rule are its certainty, and its apparent equity. The objections to it may be that, on one hand, it would increase the comparative agency of the Federal Government, and, on the other that the money might not be expended on objects of general concern; the interests of particular States not happening to coincide with the general interest in relation to improvements within such States.

"2. A rule for the Government of Grants for Light-houses, and the improvement of Harbours and Rivers, which will avoid the objects which it is

desirable to exclude from the present action of the Government; and at the same time do what is imperiously required by a regard to the general commerce of the Country."

National grants in these cases, seem to admit no possible rule of discrimination, but as the objects may be of national or local character. The difficulty lies here, as in all cases where the *degree* and not the *nature* of the case, is to govern the decision. In the extremes, the judgment is easily formed; as between removing obstructions in the Mississippi, the highway of commerce for half the nation, and a like operation, giving but little extension to the navigable use of a river, itself of confined use. In the intermediate cases, legislative discretion, and, consequently, legislative errors and partialities are unavoidable. Some controul is attainable in doubtful cases, from preliminary Investigations and Reports by disinterested and responsible agents.

In defraying the expense of internal improvements, strict justice would require that a part only and not the whole should be borne by the nation. Take for examples the Harbours of New York and New Orleans. However important in a commercial view they may be to the other portions of the Union, the States to which they belong, must derive a *peculiar* as well as a common advantage from improvements made in them, and could afford therefore to combine with grants from the common treasury, proportional contributions from their own. On this principle it is that the practice has prevailed

in the States (as it has done with Congress) of dividing the expense of certain improvements, between the funds of the State, and the contributions of those locally interested in them.

Extravagant and disproportionate expenditures on Harbours, Light-houses and other arrangements on the Seaboard ought certainly to be controuled as much as possible. But it seems not to be sufficiently recollected, that in relation to our *foreign* commerce, the burden and benefit of accomodating and protecting it, necessarily go together, and must do so as long and as far, as the public revenue continues to be drawn thro' the Custom-house. Whatever gives facility and security to navigation, cheapens imports; and all who consume them wherever residing are alike interested in what has that effect. If they consume they ought as they now do to pay. If they do not consume, they do not pay. The consumer in the most inland State derives the same advantage from the necessary and prudent expenditures for the security of our foreign navigation, as the consumer in a maritime State. Other local expenditures, have not of themselves a correspondent operation.

"3. The expediency of refusing all appropriations for internal improvements (other than those of the character last referred to, if they can be so called) until the national debt is paid; as well on account of the sufficiency of that motive, as to give time for the adoption of some constitutional or other arrangement by which the whole subject may be

placed on better grounds; an arrangement which will never be seriously attempted as long as scattering appropriations are made, and the scramble for them thereby encouraged."

The expediency of refusing appropriations, with a view to the previous discharge of the public debt, involves considerations which can be best weighed and compared at the focus of lights on the subject. A distant view like mine, can only suggest the remark: too vague to be of value, that a material delay ought not to be incurred for objects not both important and urgent; nor such objects to be neglected in order to avoid an immaterial delay. This is, indeed, but the amount of the exception glanced at in your parenthesis.

The mortifying scenes connected with a surplus revenue, are the natural offspring of a surplus; and cannot perhaps be entirely prevented by any plan of appropriation which allows a scope to Legislative discretion. The evil will have a powerful controul in the pervading dislike to taxes even the most indirect. The taxes lately repealed are an index of it. Were the whole revenue expended on internal improvements drawn from direct taxation, there would be danger of too much parsimony rather than too much profusion at the Treasury.

"4. The strong objections which exist against subscriptions to the stock of private companies by the United States."

The objections are doubtless in many respects strong. Yet cases might present themselves which

might not be favored by the State, whilst the concurring agency of an Undertaking Company would be desirable in a national view. There was a time it is said when the State of Delaware, influenced by the profits of a *Portage*, between the Delaware and Chesapeake was unfriendly to the Canal, now forming so important a link of internal communication between the North and the South. Undertakings by private companies carry with them a presumptive evidence of utility, and the private stakes in them, some security for economy in the execution, the want of which is the bane of public undertakings. Still the importunities of private companies cannot be listened to with more caution than prudence requires.

I have, as you know, never considered the powers claimed for Congress over roads and canals, as within the grants of the Constitution. But such improvements being justly ranked among the greatest advantages and best evidences of good Government; and having moreover, with us, the peculiar recommendation of binding the several parts of the Union more firmly together, I have always thought the power ought to be possessed by the common Government; which commands the least unpopular and most productive sources of revenue, and can alone select improvements with an eye to the national good. The States are restricted in their pecuniary resources; and Roads and Canals most important in a national view might not be important to the State or States possessing the domain and the soil; or

might even be deemed disadvantageous; and on the most favourable supposition might require a concert of means and regulations among several States not easily effected, nor unlikely to be altogether omitted.

These considerations have pleaded with me in favour of the policy of vesting in Congress an authority over internal improvements. I am sensible at the same time of the magnitude of the trust, as well as of the difficulty of executing it properly and the greater difficulty of executing it satisfactorily.

On the supposition of a due establishment of the power in Congress, one of the modes of using it might be, to apportion a reasonable share of the disposable revenue of the United States among the States to be applied by them to cases of State concern; with a reserved discretion in Congress to effectuate improvements of general concern which the States might not be able or not disposed to provide for.

If Congress do not mean to throw away the rich fund inherent in the public lands, would not the sales of them, after their liberation from the original pledge, be aptly appropriated to objects of internal improvement. And why not also, with a supply of competent authority, to the removal to better situations the free black as well as red population, objects confessedly of national importance and desirable to all parties. But I am travelling out of the subject before me.

The date of your letter reminds me of the delay of the answer. The delay has been occasioned by

interruptions of my health; and the answer such as it is, is offered in the same confidence in which it was asked.

With great esteem & cordial salutations.

TO EDWARD EVERETT.[1] MAD. MSS.

Augst 28 1830.

D^{R} SIR—I have duly rec^{d} your letter in w^{ch} you refer to the "nullifying doctrine," advocated as a constitutional right by some of our distinguished fellow citizens; and to the proceedings of the Virg^{a} Legislature in 98 & 99, as appealed to in behalf of that doctrine; and you express a wish for my ideas on those subjects.[2]

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[1] This letter was printed by Edward Everett in the *North American Review*, for October, 1830, vol. 31, p. 537.

[2] Having received a copy of Senator Robert Y. Hayne's speeches on the constitution which began January 19, 1830, Madison wrote to him, the draft being dated "Apr. (say 3d or 4th)":

"I rec$^{d.}$ in due time your favor enclosing your two late speeches, and requesting my views of the subject they discuss. The speeches could not be read without leaving a strong impression of the ability & eloquence which have justly called forth the eulogies of the public. But there are doctrines espoused in them from which I am constrained to dissent. I allude particularly to the doctrine which I understand to assert that the States perhaps their Governments have, singly, a constitutional right to resist & by force annul within itself acts of the Government of the U. S. which it deems unauthorized by the Constitution of the U. S.; although such acts be not within the extreme cases of oppression, which justly absolve the State from the Constitutional compact to which it is a party.

"It appears to me that in deciding on the character of the Constitution of the U. S. it is not sufficiently kept in view that being an unprecedented modification of the powers of Gov$^{t.}$ it must not be looked at thro' the refracting medium either of a consolidated Government, or of a confederated Gov^{t}; that being essentially different from both, it must be its own interpreter according to its text and *the facts of the case*.

"Its characteristic peculiarities are 1. the mode of its formation.

I am aware of the delicacy of the task in some respects; and the difficulty in every respect of doing full justice to it. But having in more than one instance complied with a like request from other friendly quarters, I do not decline a sketch of the views which I have been led to take of the doctrine in question, as well as some others connected with them; and of the grounds from which it appears that the proceedings of Virginia have been misconceived by those who have appealed to them. In order to understand the true character of the Constitution of the U. S. the error, not uncommon, must be avoided, of viewing it through the medium either of a consolidated Government or of a confederated Govt. whilst it is neither the one nor the other, but a mixture of both. And having in no model

2. its division of the supreme powers of Govt. between the States in their united capacity, and the States in their individual capacities.

"1. It was formed not by the Governments of the States as the Federal Government superseded by it was formed; nor by a majority of the people of the U. S. as a single Community, in the manner of a consolidated Government.

"It was formed by the States, that is by the people of each State, acting in their highest sovereign capacity thro' Conventions representing them in that capacity, in like manner and by the same authority as the State Constitutions were formed; with this characteristic & essential difference that the Constitution of the U. S. being a compact among the States that is the people thereof making them the parties to the compact over one people for specified objects can not be revoked or changed at the will of any State within its limits as the Constitution of a State may be changed at the will of the State, that is the people who compose the State & are the parties to its constitution & retained their powers over it. The idea of a compact between the Governors & the Governed was exploded with the Royal doctrine that Government was held by some tenure independent of the people.

"The Constitution of the U. S. is therefore within its prescribed sphere a Constitution in as strict a sense of the term as are the Constitutions of the individual States, within their respective spheres.

"2. And that it divides the supreme powers of Govt between the two Governments is seen on the face of it; the powers of war & taxation, that is of the sword & the purse, of commerce of treaties &c. vested in the Govt of the U. S. being of as high a character as any of the powers reserved to the State Govts.

the similitudes & analogies applicable to other systems of Gov^{t} it must more than any other be its own interpreter, according to its text & *the facts of the case.*

From these it will be seen that the characteristic peculiarities of the Constitution are 1. The mode of its formation, 2. The division of the supreme powers of Gov$^{t.}$ between the States in their united capacity and the States in their individual capacities.

1. It was formed, not by the Governments of the component States, as the Federal Gov^{t} for which it was substituted was formed; nor was it formed by a majority of the people of the U. S. as a single community in the manner of a consolidated Government.

"If we advert to the Gov^{t} of the U. S. as created by the Constitution it is found also to be a Gov^{t} in as strict a sense of the term, within the sphere of its powers, as the Gov^{ts} created by the Constitutions of the States are within their respective spheres. It is like them organized into a Legislative, Executive & Judicial Dep^{t} It has, like them, acknowledged cases in which the powers of those Departments are to operate and the operation is to be the same in both; that is *directly* on the persons & things submitted to their power. The concurrent operation in certain cases is one of the features constituting the peculiarity of the system.

"Between these two Constitutional Gov^{ts}, the one operating in all the States, the others operating in each respectively; with the aggregate powers of Gov^{t} divided between them, it could not escape attention, that controversies concerning the boundary of Jurisdiction would arise, and that without some adequate provision for deciding them, conflicts of physical force might ensue. A political system that does not provide for a peaceable & authoritative termination of occurring controversies, can be but the name & shadow of a Gov^{t} the very object and end of a real Gov^{t} being the substitution of law & order for uncertainty confusion & violence.

"That a final decision of such controversies, if left to each of 13 State now 24 with a prospective increase, would make the Constitution & laws of the U. S. different in different States, was obvious; and equally obvious that this diversity of independent decisions must disorganize the the Government of the Union, and even decompose the Union itself.

"Against such fatal consequences the Constitution undertakes to guard 1. by declaring that the Constitution & laws of the States in

It was formed by the States—that is by the people in each of the States, acting in their highest sovereign capacity; and formed, consequently by the same authority which formed the State Constitutions.

Being thus derived from the same source as the Constitutions of the States, it has within each State, the same authority as the Constitution of the State; and is as much a Constitution, in the strict sense of the term, within its prescribed sphere, as the Constitutions of the States are within their respective spheres; but with this obvious & essential difference, that being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of

their united capacity shall have effect, anything in the Constitution or laws of any State in its individual capacity to the contrary notwithstanding, by giving to the Judicial authority of the U. S. an appellate supremacy in all cases arising under the Constitution; & within the course of its functions, arrangements supposed to be justified by the necessity of the case; and by the agency of the people & Legislatures of the States in electing & appointing the Functionaries of the Common Govt whilst no corresponding relation existed between the latter and the Functionaries of the States.

"2. Should these provisions be found notwithstanding the responsibility of the functionaries of the Govt of the U. S. to the Legislatures & people of the States not to secure the State Govts against usurpations of the Govt of the United States there remains within the purview of the Constn an impeachment of the Executive & Judicial Functionaries, in case of their participation in the guilt, the prosecution to depend on the Representatives of the people in one branch, and the trial on the Representatives of the States in the other branch of the Govt of the U. S.

"3. The last resort within the purview of the Constn is the process of amendment provided for by itself and to be executed by the States.

"Whether these provisions taken together be the best that might have been made; and if not, what are the improvements, that ought to be introduced, are questions altogether distinct from the object presented by your communication, which relates to the Constitution as it stands.

"In the event of a failure of all these Constitutional resorts against usurpations and abuses of power and of an accumulation thereof rendering passive obedience & nonresistance a greater evil than resistance and

the States individually, as the Constitution of a State may be at its individual will.

2. And that it divides the supreme powers of Gov^t between the Gov^t of the United States, & the Gov^ts of the individual States, is stamped on the face of the instrument; the powers of war and of taxation, of commerce & of treaties, and other enumerated powers vested in the Gov^t of the U. S. being of as high & sovereign a character as any of the powers reserved to the State Gov^ts.

Nor is the Gov^t of the U. S. created by the Constitution, less a Gov^t in the strict sense of the term, within the sphere of its powers, than the Gov^ts created by the constitutions of the States are within their several spheres. It is like them

revolution, there can remain but one resort, the last of all, the appeal from the cancelled obligation of the Constitutional compact to original rights and the law of self-preservation. This is the Ultima ratio, under all Governments, whether consolidated, confederated, or partaking of both those characters. Nor can it be doubted that in such an extremity a single State would have a right, tho' it would be a natural not a *constitutional* Right to make the appeal. The same may be said indeed of particular portions of any political community whatever so oppressed as to be driven to a choice between the alternative evils.

"The proceedings of the Virginia Legislature (occasioned by the Alien and Sedition Acts) in which I had a participation, have been understood it appears, as asserting a Constitutional right in a single State to nullify laws of the U. S. that is to resist and prevent by force the execution of them, within the State.

"It is due to the distinguished names who have given that construction of the Resolutions and the Report on them to suppose that the meaning of the Legislature though expressed with a discrimination and fulness sufficient at the time may have been somewhat obscured by an oblivion of contemporary indications and impressions. But it is believed that by keeping in view distinctions (an inattention to which is often observable in the ablest discussions of the subjects embraced in those proceedings) between the Governments of the States & the States in the sense in which they were parties to the Constitution; between the several modes and objects of interposition ag^st the abuses of Power; and more especially between interpositions within the purview of the Constitution, and interpositions appealing from the Constitution to the rights of nature, paramount to all Constitutions; with these distinctions kept in view, and an attention always of ex-

organized into Legislative, Executive, & Judiciary Departments. It operates like them, directly on persons & things. And, like them, it has at command a physical force for executing the powers committed to it. The concurrent operation in certain cases is one of the features marking the peculiarity of the system.

Between these different constitutional Gov^ts^—the one operating in all the States, the others operating separately in each, with the aggregate powers of Gov^t^ divided between them, it could not escape attention that controversies would arise concerning the boundaries of jurisdiction; and that some

planatory use to the views and arguments which are combated, a confidence is felt that the Resolutions of Virg^a^ as vindicated in the Report on them, are entitled to an exposition shewing a consistency in their parts, and an inconsistency of the whole with the doctrine under consideration.

"On recurring to the printed Debates in the House of Delegates on the occasion, which were ably conducted, and are understood to have been, for the most part at least, revised by the Speakers, the tenor of them does not disclose any reference to a constitutional right in an individual State to arrest by force the operation of a law of the U. S. Concert among the States for redress ag^st^ the Alien & Sedition laws as acts of usurped power, was a leading sentiment, and the attainment of a Concert the immediate object of the course adopted, which was an invitation to the other States 'to *concur* in declaring the acts to be unconstitutional, and to *co-operate* by the necessary & proper measures in maintaining unimpaired the authorities rights and liberties reserved to the States respectively or to the people.' That by the necessary & proper measures to be concurrently & co-operatively taken were meant measures known to the Constitution, particularly the control of the Legislatures and people of the States over the Cong. of the U. S. cannot well be doubted.

"It is worthy of remark, and explanatory of the intentions of the Legislature, that the words '*and not law, but utterly null void & of no power or effect*'* which in the Resolutions before the House followed

* Whether these words were in the draft from my pen or added before the Resolutions were introduced by the member who withdrew them I am not authorized to say, no Copy of the draft having been retained & memory not to be trusted after such a lapse of time. I certainly never disapproved the erasure of them.—*Madison's Note.*

provision ought to be made for such occurrences. A political system that does not provide for a peaceable & authoritative termination of occurring controversies, would not be more than the shadow of a Govt; the object & end of a real Govt being the substitution of law & order for uncertainty confusion, and violence.

That to have left a final decision in such cases to each of the States, then 13 & already 24, could not fail to make the Constn & laws of the U. S. different in different States was obvious;

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the word unconstitutional, were near the close of the debate stricken out by common consent. It appears that the words had been regarded as only surplusage by the friends of the Resolution; but lest they should be misconstrued into a nullifying import instead of a declaration of opinion, the word unconstitutional alone was retained, as more safe agst that error. The term *nullification* to which such an important meaning is now attached, was never a part of the Resolutions and appears not to have been contained in the Kentucky Resolutions as *originally* passed, but to have been introduced at an after date.

"Another and still more conclusive evidence of the intentions of the Legislature is given in their Address to their Constituents accompanyg the publication of their Resoln. The address warns them agst the encroaching spirit of the Gen. Govt; argues the unconstitutionality of the Alien & Sedition laws; enumerates the other instances in which the Constitutional limits had been overleaped; dwells on the dangerous mode of deriving power by implication; and in general presses the necessity of watching over the consolidating tendency of the Fedr policy. But nothing is said that can be understood to look to means of maintaing the rights of the States beyond the regular ones within the forms of the Constitution.

"If any further lights on the subject could be needed a very strong one is reflected from the answers given to the Resolutions by the States who protested agst them. Their great objection, with a few undefined complaints of the spirit & character of the Resolutions, was directed agst the assumed authority of a State Legislature to declare a law of the U. S. to be unconstitutional which they considered an unwarrantable interference with the exclusive jurisdiction of the Supreme Court of the U. S. Had the Resolutions been regarded as avowing & maintaining a right in an individual State to arrest by force the execution of a law of the U. S. it must be presumed that it would have been a pointed and conspicuous object of their denunciation.

"In this review I have not noticed the idea entertained by some

and not less obvious, that this diversity of independent decisions, must altogether distract the Govt of the Union & speedily put an end to the Union itself. A uniform authority of the laws, is in itself a vital principle. Some of the most important laws could not be partially executed. They must be executed in all the States or they could be duly executed in none. An impost or an excise, for example, if not in force in some States, would be defeated in others. It is well known that this was among the lessons of experience wch had a primary influence in bringing about the existing Constitution. A loss of its general authy would moreover revive the exasperating questions between the States holding ports for foreign commerce and the adjoining States without

that disputes between the Govt of the U. S. and those of the individual States may & must be adjusted by negotiation, as between independent Powers.

"Such a mode as the only one of deciding such disputes would seem to be as expressly at variance with the language and provisions of the Constitution as in a practical view it is pregnant with consequences subversive of the Constitution. It may have originated in a supposed analogy to the negociating process in cases of disputes between separate branches or Departments of the same Govt but the analogy does not exist. In the case of disputes between independent parts of the same Govt neither of them being able to consummate its pretensions, nor the Govt to proceed without a co-operation of the several parts necessity brings about an adjustment. In disputes between a State Govt and the Govt of the U. S. the case is both theoretically & practically different; each party possessing all the Departments of an organized Governmt. Legislative Ex. & Judl ; and having each a physical force at command.

"This idea of an absolute separation & independence between the Govt of the U. S. and the State Govts as if they belonged to different nations alien to each other has too often tainted the reasoning applied to Constitutional questions. Another idea not less unsound and sometimes presenting itself is, that a cession of any part of the rights of sovereignty is inconsistent with the nature of sovereignty, or at least a degradation of it. This would certainly be the case if the cession was not both mutual & equal, but when there is both mutuality & equality there is no real sacrifice on either side, each gaining as much as it grants, and the only point to be considered is the expediency of the compact and that to be sure is a point that ought to be well considered.

them, to which are now added all the inland States necessarily carrying on their foreign commerce through other States.

To have made the decisions under the authority of the individual States, co-ordinate in all cases with decisions under the authority of the U. S. would unavoidably produce collisions incompatible with the peace of society, & with that regular & efficient administration which is the essence of free Gov$^{ts.}$ Scenes could not be avoided in which a ministerial officer of the U. S. and the correspondent officer of an individual State, would have rencounters in executing conflicting decrees, the

On this principle it is that Treaties are admissible between Independent powers, wholly alien to each other, although privileges may be granted by each of the parties at the expense of its internal jurisdiction. On the same principle it is that individuals entering into the social State surrender a portion of their equal rights as men. If a part only made the surrender, it would be a degradation; but the surrenders being mutual, and each gaining as much authority over others as is granted to others over him, the inference is mathematical that in theory nothing is lost by any; however different the result may be in practice.

"I am now brought to the proposal which claims for the States respectively a right to appeal agst an exercise of power by the Gov$^{t.}$ of the U. S. which by the States is decided to be unconstitutional, to a final decision by ¾ of the parties to the Constitution. With every disposition to take the most favorable view of this expedient that a high respect for its Patrons could prompt I am compelled to say that it appears to be either not necessary or inadmissible.

"I take for granted it is not meant that pending the appeal the offensive law of the U. S. is to be suspended within the State. Such an effect would necessarily arrest its operation everywhere, a uniformity in the operation of laws of the U. S. being indispensable not only in a Constitutional and equitable, but in most cases in a practicable point of view, and a final decision adverse to that of the Appellant State would afford grounds to all kinds of complaint which need not be traced.

"But aside from those considerations, it is to be observed that the effect of the appeal will depend wholly on the form in which the case is proposed to the Tribunal which is to decide it.

"If ¾ of the States can sustain the State in its decision it would seem that this extra constitutional course of proceeding might well be spared; inasmuch as ⅔ can institute and ¾ can effectuate an amendment of the Constitution, which would establish a permanent rule of the highest authority, instead of a precedent of construction only.

result of which would depend on the comparative force of the local posse attending them, and that a casualty depending on the political opinions and party feelings in different States.

To have referred every clashing decision under the two authorities for a final decision to the States as parties to the Constitution, would be attended with delays, with inconveniences, and with expenses amounting to a prohibition of the expedient, not to mention its tendency to impair the salutary veneration for a system requiring such frequent interpositions, nor the delicate questions which might present themselves as to the form of stating the appeal, and as to the Quorum for deciding it.

"If on the other hand ¾ are required to reverse the decision of the State it will then be in the power of the smallest fraction over ¼ (of 7 States for example out of 24) to give the law to 17 States, each of the 17 having as parties to the Constitutional compact an equal right with each of the 7 to expound & insist on its exposition. That the 7 might in particular cases be right and the 17 wrong, is quite possible. But to establish a positive & permanent rule giving such a power to such a minority, over such a majority, would overturn the first principle of a free Government and in practice could not fail to overturn the Govt. itself.

"It must be recollected that the Constitution was proposed to the people of the States as a *whole*, and unanimously adopted as a *whole*, it being a part of the Constitution that not less than ¾ should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases where peculiar interests were at stake a majority even of ¾ are distrusted and a unanimity required to make any change affecting those cases.

"When the Constitution was adopted as a whole, it is certain that there are many of its parts which if proposed by themselves would have been promptly rejected. It is far from impossible that every part of a whole would be rejected by a majority and yet the whole be unanimously accepted. Constitutions will rarely, probably never be formed without mutual concessions, without articles conditioned on & balancing each other. Is there a Constitution of a single State out of the 24 that would bear the experiment of having its component parts submitted to the people separately, and decided on according to their insulated merits.

"What the fate of the Constitution of the U. S. would be if a few States could expunge parts of it most valued by the great majority,

To have trusted to negociation, for adjusting disputes between the Govt of the U. S. and the State Govts as between independent & separate sovereignties, would have lost sight altogether of a Constitution & Govt for the Union; and opened a direct road from a failure of that resort, to the ultima ratio between nations wholly independent of and alien to each other. If the idea had its origin in the process of adjustment between separate branches of the same Govt the analogy entirely fails. In the case of disputes between independent parts of the same Govt neither part being able to consummate its will, nor the Gov. to proceed without a concurrence of the parts,

and without which the great majority would never have agreed to it, can have but one answer.

"The difficulty is not removed by limiting the process to cases of construction. How many cases of that sort involving vital texts of the Constitution, have occurred? how many now exist? How many may hereafter spring up? How many might be plausibly enacted, if entitled to the privilege of a decision in the mode proposed.

"Is it certain that the principle of that mode may not reach much farther than is contemplated? If a single State can of right require ¾ of its Co-States to overrule its exposition of the Constitution, because that proportion is authorized to amend it, is the plea less plausible that as the Constitution was unanimously formed it ought to be unanimously expounded.

"The reply to all such suggestions must be that the Constitution is a compact; that its text is to be expounded according to the provision for it making part of that Compact; and that none of the parties can rightfully violate the expounding provision, more than any other part. When such a right accrues as may be the case, it must grow out of abuses of the Constitution amounting to a release of the sufferers from their allegiance to it.

"Will you permit me Sir to refer you to Nos 39 & 44 of the Federalist Edited at Washington by Gideon, which will shew the views taken on some points of the Constitution at the period of its adoption. I refer to that Edition because none preceding it are without errors in the names prefixed to the several papers as happens to be the case in No 51 for which you suppose Col: Hamilton to be responsible. The errors were occasioned by a memorandum of his penned probably in haste, & partly in a lumping way. It need not be remarked that they were pure inadvertences.

"I fear Sir I have written you a letter the length of which may

necessity brings about an accommodation. In disputes between a State Gov.t and the Gov.t of the U. States the case is practically as well as theoretically different; each party possessing all the Departments of an organized Gov.t Legisl. Ex. & Judiciary; and having each a physical force to support its pretensions. Although the issue of negociation might sometimes avoid this extremity, how often would it happen among so many States, that an unaccommodating spirit in some would render that resource unavailing? A contrary supposition would not accord with a knowledge of human nature or the evidence of our own political history.

accord as little with your patience, as I am sorry to foresee that the scope of parts of it must do with your judgment. But a naked opinion did not appear respectful either to the subject or to the request with which you honored me, and notwithstanding the latitude given to my pen, I am not unaware that the views it presents may need more of development in some instances, if not more exactness of discrimination in others, than I could bestow on them. The subject has been so expanded and rec.d such ramifications & refinements, that a full survey of it is a task ag.st which my age alone might justly warn me.

"The delay Sir in making the acknowledgments I owe you was occasioned for a time by a crowd of objects which awaited my return from a long absence at Richmond, and latterly by an indisposition from which I am not yet entirely recovered. I hope you will be good eno' to accept these apologies, and with them assurances of my high esteem & my cordial salutations, in which M.rs M. begs to be united with me, as I do with her in a respectful tender of them to M.rs Hayne." —*Chic. Hist. Soc. MSS.*

August 20, 1830, Madison wrote to Everett:

"There is not I am persuaded the slightest ground for supposing that Mr. Jefferson departed from his purpose not to furnish Kentucky with a set of Resolutions for the year '99. It is certain that he penned the Resolutions of '98, and, probably in the terms in which they passed. It was in those of '99 that the word 'nullification' appears.

"Finding among my pamphlets a copy of the debates in the Virginia House of Delegates on the Resolutions of '98, and one of an address of the two Houses to their constituents on the occasion, I enclose them for your perusal; and I add another, though it is less likely to be new to you, the 'Report of a Committee of the S. Carolina House of Representatives, Dec.r 9, 1828,' in which the nullifying doctrine is stated in the precise form in which it is now asserted. There was a protest

The Constitution, not relying on any of the preceding modifications for its safe & successful operation, has expressly declared on the one hand; 1. "That the Constitution, and the laws made in pursuance thereof, and all Treaties made under the authority of the U. S. shall be the supreme law of the land; 2. That the judges of every State shall be bound thereby, anything in the Const^{n} or laws of any State to the contrary notwithstanding; 3. That the judicial power of the U. S. shall extend to all cases in law & equity arising under the Constitution, the laws of the U. S. and Treaties made under their authority &c."

On the other hand, as a security of the rights & powers of

by the minority in the Virginia Legislature of '98 against the Resolutions, but I have no copy. The matter of it may be inferred from the speeches in the Debates. I was not a member in that year, though the penman of the Resolutions, as now supposed."—*Mad. MSS.*

Again on September 10, 1830, he wrote to Everett:

"Since my letter in which I expressed a belief that there was no ground for supposing that the Kentucky Resolutions of 1799, in which the term 'nullification' appears, were drawn by Mr. Jefferson, I infer from a manuscript paper containing the term just noticed, that altho he probably had no agency in the draft, nor even any knowledge of it at the time, yet that the term was borrowed from that source. It may not be safe, therefore, to rely on his to Mr. W. C. Nicholas printed in his Memoir & Correspondence, as a proof that he had no connection with or responsibility for the use of such term on such an occasion. Still I believe that he did not attach to it the idea of a constitutional right in the sense of S. Carolina, but that of a natural one in cases justly appealing to it."—*Mad. MSS.*

On September 23, 1830, he wrote to Nicholas P. Trist:

"In a letter, lately noticed, from M^{r} Jefferson, dated November 17, 1799, he '*incloses me a copy of the draught of the Kentucky Resolves*', (a press copy of his own manuscript). Not a word of explanation is mentioned. It was probably sent, and possibly at my request, in consequence of my being a member elect of the Virg^{a} Legislature of 1799, which would have to vindicate its contemporary Resol$^{ns.}$ of –98. It is remarkable that the paper differs both from the Kentucky Resolutions of –98, & from those of –99. It agrees with the former in the main and must have been the pattern of the Resol$^{ns.}$ of that year, but contains passages omitted in them, which employ the terms nullification & nullifying; and it differs in the quantity of matter from the

the States in their individual capacities, ag.st. an undue preponderance of the powers granted to the Government over them in their united capacity, the Constitution has relied on, 1. The responsibility of the Senators and Representatives in the Legislature of the U. S. to the Legislatures & people of the States. 2. The responsibility of the President to the people of the U. States; & 3. The liability of the Ex. and Judiciary functionaries of the U. S. to impeachment by the Representatives of the people of the States, in one branch of the Legislature of the U. S. and trial by the Representatives of the States, in the other branch; the State functionaries, Legislative, Executive, & judiciary, being at the same time in their appointment & responsibility, altogether independent of the agency or authority of the U. States.

How far this structure of the Gov.t of the U. S. be adequate & safe for its objects, time alone can absolutely determine. Experience seems to have shown that whatever may grow out of future stages of our national career, there is as yet a sufficient controul in the popular will over the Executive & Legislative Departments of the Gov.t When the Alien &

Resolutions of –99, but agrees with them in a passage which employs that language, and would seem to have been the origin of it. I conjecture that the correspondent in Kentucky, Col. George Nicholas, probably might think it better to leave out particular parts of the draught than risk a misconstruction or misapplication of them; and that the paper might, notwithstanding, be within the reach & use of the Legislature of –99, & furnish the phraseology containing the term 'nullification.' Whether M.r Jefferson had noted the difference between his draught & the Resol.ns. of –98 (he could not have seen those of –99, which passed Nov.r 14,) does not appear. His files, particularly his correspondence with Kentucky, must throw light on the whole subject. This aspect of the case seems to favor a recall of the communication if practicable. Though it be true that M.r Jefferson did not draught the Resolutions of –99, yet a denial of it, simply, might imply more than w.d be consistent with a knowledge of what is here stated."—*Mad. MSS.*

See Warfield's *Kentucky Resolutions of 1798;* also, for Jefferson's correspondence, his Writings (P. L. Ford, Federal Edition) viii., 57, *et seq.*

Sedition laws were passed in contravention to the opinions and feelings of the community, the first elections that ensued put an end to them. And whatever may have been the character of other acts in the judgment of many of us, it is but true that they have generally accorded with the views of a majority of the States and of the people. At the present day it seems well understood that the laws which have created most dissatisfaction have had a like sanction without doors; and that whether continued varied or repealed, a like proof will be given of the sympathy & responsibility of the Representative Body to the Constituent Body. Indeed, the great complaint now is, not against the want of this sympathy and responsibility, but against the results of them in the legislative policy of the nation.

With respect to the Judicial power of the U. S. and the authority of the Supreme Court in relation to the boundary of jurisdiction between the Federal & the State Gov^ts^ I may be permitted to refer to the [thirty-ninth] number of the "Federalist" for the light in which the subject was regarded by its writer, at the period when the Constitution was depending; and it is believed that the same was the prevailing view then taken of it, that the same view has continued to prevail, and that it does so at this time notwithstanding the eminent exceptions to it.

But it is perfectly consistent with the concession of this power to the Supreme Court, in cases falling within the course of its functions, to maintain that the power has not always been rightly exercised. To say nothing of the period, happily a short one, when judges in their seats did not abstain from intemperate & party harangues, equally at variance with their duty and their dignity, there have been occasional decisions from the Bench which have incurred serious & extensive disapprobation. Still it would seem that, with but few exceptions, the course of the judiciary has been hitherto sustained by the predominant sense of the nation.

Those who have denied or doubted the supremacy of the

judicial power of the U. S. & denounce at the same time nullifying power in a State, seem not to have sufficiently adverted to the utter inefficiency of a supremacy in a law of the land, without a supremacy in the exposition & execution of the law; nor to the destruction of all equipoise between the Federal Gov^{t} and the State governments, if, whilst the functionaries of the Fed^{l} Gov^{t} are directly or indirectly elected by and responsible to the States & the functionaries of the States are in their appointments & responsibility wholly independent of the U. S. no constitutional control of any sort belonged to the U. S. over the States. Under such an organization it is evident that it would be in the power of the States individually, to pass unauthorized laws, and to carry them into complete effect, anything in the Const^{n} and laws of the U. S. to the contrary notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect, thro the Legislative Ex. or Judiciary organ of the State, would be equally fatal to the constitutional relation between the two Gov^{ts}.

Should the provisions of the Constitution as here reviewed be found not to secure the Gov^{t} & rights of the States agst usurpations & abuses on the part of the U. S. the final resort within the purview of the Const^{n} lies in an amendment of the Const^{n} according to a process applicable by the States.

And in the event of a failure of every constitutional resort, and an accumulation of usurpations & abuses, rendering passive obedience & non-resistence a greater evil, than resistence & revolution, there can remain but one resort, the last of all, an appeal from the cancelled obligations of the constitutional compact, to original rights & the law of self-preservation. This is the ultima ratio under all Gov^{t} whether consolidated, confederated, or a compound of both; and it cannot be doubted that a single member of the Union, in the extremity supposed, but in that only would have a right, as an extra & ultra constitutional right, to make the appeal.

This brings us to the expedient lately advanced, which

claims for a single State a right to appeal agᵗ an exercise of power by the Govᵗ of the U. S. decided by the State to be unconstitutional, to the parties of the Const. compact; the decision of the State to have the effect of nullifying the act of the Govᵗ of the U. S. unless the decision of the State be reversed by three-fourths of the parties.

The distinguished names & high authorities which appear to have asserted and given a practical scope to this doctrine, entitle it to a respect which it might be difficult otherwise to feel for it.

If the doctrine were to be understood as requiring the three-fourths of the States to sustain, instead of that proportion to reverse, the decision of the appealing State, the decision to be without effect during the appeal, it wᵈ be sufficient to remark, that this extra constˡ course might well give way to that marked out by the Const. which authorizes $\frac{2}{3}$ of the States to institute and $\frac{3}{4}$ to effectuate, an amendment of the Constⁿ. establishing a permanent rule of the highest authʸ in place of an irregular precedent of construction only.

But it is understood that the nullifying doctrine imports that the decision of the State is to be presumed valid, and that it overrules the law of the U. S. unless overuled by $\frac{3}{4}$ of the States.

Can more be necessary to demonstrate the inadmissibility of such a doctrine than that it puts it in the power of the smallest fraction over $\frac{1}{4}$ of the U. S.—that is, of 7 States out of 24—to give the law and even the Constⁿ to 17 States, each of the 17 having as parties to the Constⁿ an equal right with each of the 7 to expound it & to insist on the exposition. That the 7 might, in particular instances be right and the 17 wrong, is more than possible. But to establish a positive & permanent rule giving such a power to such a minority over such a majority, would overturn the first principle of free Govᵗ and in practice necessarily overturn the Govᵗ itself.

It is to be recollected that the Constitution was proposed

to the people of the States as a *whole*, and unanimously adopted by the States as a *whole*, it being a part of the Constitution that not less than ¾ of the States should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases when peculiar interests were at stake, a proportion even of ¾ is distrusted, and unanimity required to make an alteration.

When the Constitution was adopted as a whole, it is certain that there were many parts which if separately proposed, would have been promptly rejected. It is far from impossible, that every part of the Constitution might be rejected by a majority, and yet, taken together as a whole be unanimously accepted. Free constitutions will rarely if ever be formed without reciprocal concessions; without articles conditioned on & balancing each other. Is there a constitution of a single State out of the 24 that w^d bear the experiment of having its component parts submitted to the people & separately decided on?

What the fate of the Constitution of the U. S. would be if a small proportion of States could expunge parts of it particularly valued by a large majority, can have but one answer.

The difficulty is not removed by limiting the doctrine to cases of construction. How many cases of that sort, involving cardinal provisions of the Constitution, have occurred? How many now exist? How many may hereafter spring up? How many might be ingeniously created, if entitled to the privilege of a decision in the mode proposed?

Is it certain that the principle of that mode w^d not reach farther than is contemplated. If a single State can of right require ¾ of its co-States to overrule its exposition of the Constitution, because that proportion is authorized to amend it, would the plea be less plausible that, as the Constitution was unanimously established, it ought to be unanimously expounded?

The reply to all such suggestions seems to be unavoidable and irresistible, that the Constitution is a compact; that its

text is to be expounded according to the provision for expounding it, making a part of the compact; and that none of the parties can rightfully renounce the expounding provision more than any other part. When such a right accrues, as it may accrue, it must grow out of abuses of the compact releasing the sufferers from their fealty to it.

In favour of the nullifying claim for the States individually, it appears, as you observe, that the proceedings of the Legislature of Virg.ª in 98 & 99 ag.st the Alien and Sedition Acts are much dwelt upon.

It may often happen, as experience proves, that erroneous constructions, not anticipated, may not be sufficiently guarded against in the language used; and it is due to the distinguished individuals who have misconceived the intention of those proceedings to suppose that the meaning of the Legislature, though well comprehended at the time, may not now be obvious to those unacquainted with the cotemporary indications and impressions.

But it is believed that by keeping in view the distinction between the Gov.t of the States & the States in the sense in which they were parties to the Const.n; between the rights of the parties, in their concurrent and in their individual capacities; between the several modes and objects of interposition ag.st the abuses of power, and especially between interpositions within the purview of the Const.n & interpositions appealing from the Const.n to the rights of nature paramount to all Constitutions; with these distinctions kept in view, and an attention, always of explantory use, to the views & arguments which were combated, a confidence is felt, that the Resolutions of Virginia, as vindicated in the Report on them, will be found entitled to an exposition, showing a consistency in their parts and an inconsistency of the whole with the doctrine under consideration.

That the Legislature c.d not have intended to sanction such a doctrine is to be inferred from the debates in the House of Delegates, and from the address of the two Houses to their

constitutents on the subject of the resolutions. The tenor of the debates w^ch^ were ably conducted and are understood to have been revised for the press by most, if not all, of the speakers, discloses no reference whatever to a constitutional right in an individual State to arrest by force the operation of a law of the U. S. Concert among the States for redress against the alien & sedition laws, as acts of usurped power, was a leading sentiment, and the attainment of a concert the immediate object of the course adopted by the Legislature, which was that of inviting the other States "to *concur* in declaring the acts to be unconstitutional, and to *co-operate* by the necessary & proper measures in maintaining unimpaired the authorities rights & liberties reserved to the States respectively & to the people." That by the necessary and proper measures to be *concurrently* and co-operatively taken, were meant measures known to the Constitution, particularly the ordinary controul of the people and Legislatures of the States over the Gov^t^ of the U. S. cannot be doubted; and the interposition of this controul as the event showed was equal to the occasion.

It is worthy of remark, and explanatory of the intentions of the Legislature, that the words "not law, but utterly null, void, and of no force or effect," which had followed, in one of the Resolutions, the word "unconstitutional," were struck out by common consent. Tho the words were in fact but synonymous with "unconstitutional," yet to guard against a misunderstanding of this phrase as more than declaratory of opinion, the word unconstitutional alone was retained, as not liable to that danger.

The published address of the Legislature to the people their constituents affords another conclusive evidence of its views. The address warns them against the encroaching spirit of the Gen^l^ Gov^t^, argues the unconstitutionality of the alien & sedition acts, points to other instances in which the const^l^ limits had been overleaped; dwells upon the dangerous mode of deriving power by implications; and in general presses the

necessity of watching over the consolidating tendency of the Fed^{l} policy. But nothing is s^{d} that can be understood to look to means of maintaining the rights of the States beyond the regular ones within the forms of the Const^{n}.

If any farther lights on the subject c^{d} be needed, a very strong one is reflected in the answers to the Resolutions by the States which protested agst them. The main objection to these, beyond a few general complaints agst the inflammatory tendency of the resolutions was directed agst the assumed auth^{y} of a State Legisl^{e} to declare a law of the U. S. unconstitutional, which they pronounced an unwarrantable interference with the exclusive jurisdiction of the Supreme C^{t} of the U. S. Had the resol^{ns} been regarded as avowing & maintaining a right in an indiv^{l} State, to arrest by force the execution of a law of the U. S. it must be presumed that it w^{d} have been a conspicuous object of their denunciation.

TO MARGARET B. SMITH.[1]

MONTPELLIER, September, 1830.

I have received, my dear Madam, your very friendly, and I must add, very flattering letter; in

[1] Copy of the original among the family papers of the late J. Henley Smith, Esq., of Washington. On the same subject Madison wrote to Henry St. George Tuckner, April 30, 1830, giving the same information and adding:

"Mr. Jefferson's letters to me amount to hundreds. But they have not been looked into for a long time, with the exception of a few of latter dates. As he kept copies of all his letters throughout the period, the originals of those to me exist of course elsewhere.

"My eye fell on the inclosed paper. It is already in obscurity, and may soon be in oblivion. The Ceracchi named was an artist celebrated for his genius, & was thought a rival in embryo to Canova & doomed to the guillotine as the author or patron, guilty or suspected, of the infernal machine for destroying Bonaparte. I knew him well, having been a lodger in the same house with him, and much teased by his eager hopes on w^{ch} I constantly threw cold water, of obtaining the aid of Congress for his grand project. Having failed in this chance,

which you wish, from my own hand, some reminiscence marking the early relations between Mr. Jefferson and myself, and involving some anecdote concerning him that may have a place in a manuscript volume you are preparing as a legacy for your son.

I was a stranger to Mr. Jefferson till the year 1776, when he took his seat in the first Legislature under the constitution of Virginia then newly formed; being at the time myself a member of that Body, and for the first time a member of any public Body. The acquaintance then made with him was very slight; the distance between our ages being considerable, and other distances much more so. During part of the time whilst he was Governour of the State, a service to which he was called not long after, I had a seat in the Council associated with

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he was advised by me & others to make the experiment of subscriptions, with the most auspicious names heading the list, and considering the general influence of Washington and the particular influence of Hamilton on the corps of speculators then suddenly enriched by the funding system, the prospect was encouraging. But just as the circular address was about to be despatched, it was put into his head that the scheme, was merely to get rid of his importunities, and being of the genus irritabile, suddenly went off in anger and disgust, leaving behind him heavy drafts on Genl. W. Mr. Jefferson &c. &c. for the busts &c. he had presented to them. His drafts were not the effect of avarice, but of his wants, all his resources having been exhausted in the tedious pursuit of his object. He was an enthusiastic worshipper of Liberty and Fame, and his whole soul was bent on securing the latter by rearing a monument to the Former, which he considered as personified in the American Republic. Attempts were made to engage him for a statue of Genl. W. but he wd. not stoop to that."—*Mad. Mss.* The enclosure was Ceracchi's circular concerning his proposed monument. A photograph of his bust of Madison is the frontispiece of this edition of his writings.

him. Our acquaintance there became intimate; and a friendship was formed, which was for life, and which was never interrupted in the slightest degree for a single moment.

Among the occasions which made us immediate companions was the trip in 1791, to the borders of Canada to which you refer. According to an understanding between us, the observations in our way through the Northern part of N. York, and the newly settled entirety of Vermont, to be noted by him, were of a miscellaneous cast, and were in part at least noted on the Birch bark of which you speak. The few observations devolving on me, related chiefly to agricultural and economic objects. On recurring to them, I find the only interest they contain is in the comparison they may afford of the infant state with the present growth of the settlements through which we passed, and I am sorry that my memory does not suggest any particular anecdote to which yours must have alluded. The scenes & subjects which had occurred during the session of Congress which had just terminated at our departure from New York, entered of course into our itinerary conversations.

In one of those scenes, a dinner party at which we were both present, I recollect an incident now tho' not perhaps adverted to then, which as it is characteristic of M^r^ Jefferson, I will substitute for a more exact compliance with your request.

The new Constitution of the U. States having just been put into operation, forms of Government

were the uppermost topics every where, more especially at a convivial board, and the question being started as to the best mode of providing the Executive chief, it was among other opinions, boldly advanced that a hereditary designation was preferable to any elective process that could be devised. At the close of an eloquent effusion against the agitations and animosities of a popular choice and in behalf of birth, as on the whole, affording even a better chance for a suitable head of the Government, M^r. Jefferson, with a smile remarked that he had heard of a university somewhere in which the Professorship of Mathematics was hereditary. The reply, received with acclamation, was a coup de grace to the Anti-Republican Heretic.

Whilst your affection is preparing, from other sources, an instructive bequest for your son, I must be allowed to congratulate him on the precious inheritance he will enjoy in the examples on which his filial feelings will most delight to dwell.

M^rs. Madison failed to obtain the two points she intended for you; but will renew her efforts to fulfil her promise. The only drawing of our House is that by D^r Thornton, and is without the wings now making part of it.

Be pleased, my dear Madam, to express to M^r. Smith the particular esteem I have ever entertained for the lights of his mind, and the purity of his principles; and to accept for him, & yourself my cordial salutations. M^rs Madison who has lately been seriously ill, but is now recovering, desires

me to assure you of her affectionate friendship, and joins me in wishing for the entire circle of your family, every happiness.

TO THOMAS W. GILMER. MAD. MSS.

Sep[r] 6, 1830.

D[R] SIR—I rec[d.] by the last mail yours of Aug. 31. I concur with you entirely in the expediency of promoting as much as possible a sympathy between the incipient and the finishing establishments provided for public education; & in the particular expedient you suggest, of providing for a complete education at the public expence of youths of distinguished capacities, whose parents are too poor to defray the expence. Such a provision made a part of a Bill for the "Diffusion of knowledge," in the code prepared by Mr. Jefferson Mr. Wythe & Mr. Pendleton, between the years 1776, & 1779.[1] The bill proposed to carry the selected youths thro' the several gradations of schools, from the lowest to the highest, and it deserves consideration, whether, instead of an immediate transition from the primary schools to the University, it would not be better to substitute a preparatory course at some intermediate seminary, chosen with the approbation of the parents or Guardians. One of the recommendations of this benevolent provision in behalf of native genius is, as you observe, the nursery it would form for competent teachers in the primary schools. But it may

[1] See the bill in *Jefferson's Writings* (P. L. Ford, Federal Edition) ii., 414.

be questionable whether a *compulsive* destination of them to that service would, in practice, answer expectation. The other prospects opened to their presumed talents & acquirements might make them reluctant, & therefore the less eligible agents.

As it is probable that the case of the primary schools will be among the objects taken up at the next session of the Legislature, I am glad to find you are turning your attention so particularly to it and that the aid of the Faculty is so attainable. A satisfactory plan for primary schools, is certainly a vital desideratum in our Republics, and is at the same time found to be a difficult one everywhere. It might be useful to consult as far as there may be opportunities, the different modifications presented in the laws of different States. The New England, N. York, & Pennsylvania examples, may possibly afford useful hints. There has lately I believe been a plan discussed, if not adopted by the Legislature of Maryland, where the situation is more analogous than that of the more Northern States, to the situation of Virg[a]. The most serious difficulty in all the Southern States results from the character of their population and the want of density in the free part of it. This I take to be the main cause of the little success of the experiment now on foot with us. I hope that some improvements may be devised, that will render it less inadequate to its object; and I should be proud of sharing in the merit. But my age, the unsettled state of my health, my limited acquaintance with the local circumstances to be accommodated, and

my inexperience of the principles dispositions and views which prevail in the Legislative Body, unfit me for the flattering co-operation you would assign me. The task, I am persuaded, will be left in hands much better in all those respects. . . .

TO JARED SPARKS. MAD. MSS.

October 5th, 1830.

Dear Sir—Your letter of July 16 was duly rec[d]. The acknowledgment of it has awaited your return from your tour to Quebec, which I presume has by this time taken place.

Inclosed is the exact copy you wish of the draught of an address prepared for President Washington, at his request in the year 1792, when he meditated a retirement at the expiration of his first term.[1] You will observe that (with a few verbal exceptions) it differs from the extract enclosed in your letter only in the *provisional* paragraphs, which had become inapplicable to the period and plan of his communication to Col. Hamilton.

The N° of the N. American Review for Jan[y] last, being I find, a duplicate, I return it. The pages to which you refer throw a valuable light on a transaction which was taking historical root, in a shape unjust as well as erroneous. Did you ever notice the "Life of M[r] Jay" in Delaplaine's biographical works[2]? The materials of it were evidently derived

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[1] The draft may be seen *ante*, Vol. VI., p. 113, n.

[2] Delaplaine's *Repository of the Lives and Portraits of Distinguished Americans*. Philadelphia, 1818.

from the papers, if not the pen of M^r. Jay, and are marked by the misconceptions into which he had fallen. It may be incidentally noted as one of the confirmations of the fallibility of Hamilton's memory in allotting the N^os in the "Federalist" to the respective writers, that one of them, N° 64, which appears by Delaplaine, to have been written by Mr. Jay, as it certainly was, is put on the list of Mr. Hamilton, as was not less certainly the case with a number of others, written by another hand.

Previous to the rec^t. of your letter I had rec^d. one from Mr. Monroe, to whom I had mentioned the liberty I had taken with Rayneval's memoir. I inclose the part of his letter answering that part of mine.

TO HENRY CLAY. MAD. MSS.

MONTP^R., Oct^r. 9, 1830.

DEAR SIR—I have just been favoured with yours of the 22d ult. inclosing a copy of your address delivered at Cincinnati.

Without concurring in everything that is said I feel what is due to the ability and eloquence which distinguish the whole.[1] The rescue of the Resolu-

[1] "At the epoch of 1798–9, I had just attained my majority, and although I was too young to share in the public councils of my country, I was acquainted with many of the actors of that memorable period; I knew their views, and formed and freely expressed my own opinions on passing events." He insisted that the Kentucky and Virginia resolutions contemplated action to correct the evil of federal usurpation by the States collectively, following the same line of reasoning as that of Madison.—*Works* (Federal Edition), vii., 401.

tions of Kentucky in –98 & –99, from the misconstructions of them, was very apropos; that authority being particularly relied on as an *ægis* to the nullifying doctrine which, notwithstanding its hideous aspect & fatal tendency, has captivated so many honest minds. In a late letter to one of my correspondents I was led to the like task of vindicating the proceedings of Virginia in those years. I would gladly send you a copy, if I had a suitable one. But as the letter is appended to the N. Am. Review for this month, you will probably have an early opportunity of seeing it.[1]

With my thanks, sir, for your obliging communication, I beg you to accept assurances of my great & cordial esteem, in which Mrs. Madison joins me, as I do her, in the best regards which she offers to Mrs. Clay.

TO ANDREW STEVENSON. MAD. MSS.

MONTP^{R}, Nov^{r}. 27, 1830.

D^{R} SIR I have rec^{d}. your very friendly favor of the 20th instant, referring to a conversation when I had lately the pleasure of a visit from you, in which you mentioned your belief that the terms "common defence & general welfare" in the 8th section of the first article of the Constitution of the U. S. were still regarded by some as conveying to Congress a substantive & indefinite power, and in which I communicated my views of the introduction and occasion of the terms, as precluding that comment on them, and you express a wish that I would repeat those views in the answer to your letter.[2]

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[1] *Ante* p. 370.

[2] In a letter of the same date enclosing the letter, Madison said:
"I have omitted a vindication of the true punctuation of the clause,

However disinclined to the discussion of such topics at a time when it is so difficult to separate in the minds of many, questions purely constitutional from the party polemics of the day, I yield to the precedents which you think I have imposed on myself, & to the consideration that without relying on my personal recollections, which your partiality over-values, I shall derive my construction of the passage in question from sources of information & evidence known or accessible to all who feel the importance of the subject, and are disposed to give it a patient examination.

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because I now take for certain that the original Document signed by the members of the Convention, is in the Department of State, and that it testifies for itself against the erroneous editions of the text in that particular. Should it appear that the Document is not there, or that the error had slipped into it, the materials in my hands to which you refer, will amount I think to a proof outweighing even that authority. It would seem a little strange, if the original Constitution be in the Department of State, that it has hitherto escaped notice. But it is to be explained I presume by the fact that it was not among the papers relating to the Const^{n}· left with Gen^{l}· Washington, and there deposited by him; but, having been sent from the Convention to the old Congress, lay among the mass of papers handed over on the expiration of the latter to that Dep^{t}· On your arrival at Washington, you will be able personally, or by a friend having more leisure, to satisfy yourself on these points. It appears as you foretold that my letter in the North$_{n}$ Review has encountered newspaper criticism; but as yet little if at all I believe on the ground looked for. In some instances, both the letter & the report of 1799 are misunderstood, and in none that I have seen has the distinction been properly kept in view between the authority of a higher Tribunal to decide on the extent of its own jurisdiction, compared with that of other Tribunals, and its claim of jurisdiction in any particular case or description of cases as within that extent; it being presumed that if not within the extent of its jurisdiction it will be pronounced coram non judice; and it being understood that if not so, it will be a case of usurpation & to be treated as such."—*Mad. MSS.*

(For the punctuation of the Constitution see *ante*, Vol. IV., p. 489.)

He wrote a memorandum to accompany his letter to Stevenson:

"Memorandum not used in letter to Mr. Stevenson

"These observations will be concluded with a notice of the arg^{t} in

In tracing the history & determining the import of the terms "common defence & general welfare," as found in the text of the Constitution, the following lights are furnished by the printed Journal of the Convention which formed it:

The terms appear in the general propositions offered May 29, as a basis for the incipient deliberations, the first of which "Resolved that the articles of the Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution, namely, common defence, security of liberty, and general welfare." On the day following, the

favor of the grant of a full power to provide for Common D. & Genl. w. drawn from the *punctuation* in some Editions of the Const^{n}.

"According to one mode of presenting the text: it reads as follows: Congress shall have power To lay & collect taxes duties- imposts & excises; to pay the debts & provide for the C.D. & G.W. of the U.S. but all duties imposts & excises shall be uniform; to another mode the same with commas—vice semicolons.

"According to the other mode the text stands thus: Congress shall have power,

To lay & col. tax, d^{s} imp. & excises;
To pay the debts & provide for the Com. d. & G.W.
of the U. S.; but all d^{s} imp. & exc^{s} shall be
uniform throug^{t} the U. S.

and from this view of the text, it is inferred that the latter sentence conveys a distinct substantive power to provide for the C.D. & G.W.

"Without enquiring how far the text in this form w^{d} convey the power in question; or admitting that any mode of pointing or distributing the terms could invalidate the evidence w^{ch} has been exhibited, that it was not the intention of the Gen^{l} or of the St. Conv^{ns} to express by the use of the terms C.D. & G.W. a substantive & indefinite power; or to imply that the Gen. terms were not to be explained and limited by the specified powers, succeeding them; in like manner as they were explained & limited in the former Articles of Confed^{n}. from which the terms were taken; it happens that the authenticity of the punctuation which preserves the Unity of the clause can be as satisfactorily shewn, as the true intention of the parties to the Const^{n}. has been shewn in the language used by them.

"The only instance of a division of the Clause afforded by the Journal of the Convention is in the Draft of a Const^{n} reported by a Com^{e} of five members, & entered on the 12. of Sep^{r}.

"But that this must have been an erratum of the pen or of the press,

proposition was exchanged for, "Resolved that a Union of the States merely Federal will not accomplish the objects proposed by the Articles of the Confederation, namely, common defence, security of liberty and general welfare."

The inference from the use here made of the terms & from the proceedings on the subsequent propositions is, that altho common defence & general welfare were objects of the Confederation, they were limited objects, which ought to be enlarged by an enlargement of the particular powers to which they

may be inferred from the circumstance that in a copy of that Report printed at the time for the use of the members & now in my possession the text is so pointed as to unite the parts in one substantive clause—an inference favored also by a previous Report of Sep^{t}. 4 by a Com^{e} of eleven in which the parts of the clause are united not separated.

"And that the true reading of the Const^{n} as it passed, is that which unites the parts, is abundantly attested by the following facts.

"1. Such is the form of text in the Const^{n} printed at the close of the Convention, after being signed by the members, of which a copy is also now in my possession.

"2. The case is the same in the Const^{n} reported from the Convention to the old Congress as printed on their Journal of Sep^{r}. 28, 1787, and transmitted by that Body to the Legislatures of the several States

"3. The case is the same in the copies of the transmitted Const^{n} as printed by the ratifying States; several of which have been examined and it is a presumption that there is no variation in the others. The text is in the same form in an Ed^{n} of the Const. published in 1814 by order of the Senate; as also in the Const^{n} as prefixed to the Ed^{n} of the Laws of the U. S.

"Should it be not contested that the origl. Const. in its engrossed or enrolled state with the names of the subscribing members suffixed thereto, presents the text in the same form, that alone must extinguish the arg^{t} in question.

"If contrary to every ground of confidence the text in its original enrolled Document, should not coincide with these multiplied examples, the first question w^{d} be of comparative probability of error even in the enrolled doct. and in the n^{o} & variety of the concerning examples in opposition to it.

"And a 2^{d} question, whether the construction put on the text in any of its forms or punctuations ought to have the weight of a feather agst the solid & diversified proofs which have been pointed out of the meaning of the parties to the Const^{n}.

were limited, and to be accomplished by a change in the structure of the Union from a form merely Federal to one partly national; and as these general terms are prefixed in the like relation to the several legislative powers in the new charter, as they were in the old, they must be understood to be under like limitations in the new as in the old.

In the course of the proceedings between the 30th of May and the 6th of Augt, the terms common defence & general welfare, as well as other equivalent terms, must have been dropped; for they do not appear in the Draft of a Constitution, reported on that day by a committee appointed to prepare one in detail, the clause in which those terms were afterward inserted, being in the Draft simply, "The Legislature of the U. S. shall have power to lay & collect taxes duties, imposts, & excises."

The manner in which the terms became transplanted from the old into the new system of Government, is explained by a course somewhat adventitiously given to the proceedings of the Convention.[1]

On the 18th of Augst among other propositions referred to the committee which had reported the draft, was one "to *secure* the payment of the public debt" and

On the same day was appointed a committee of eleven members, (one from each State) "to consider the necessity & expediency of *the debts of the several States*, being assumed by the U. States."

On the 21st of Augst this last committee reported a clause in the words following: "The Legislature of the U. States *shall have power* to fulfil the engagements *which have been* entered into by Congress, and to discharge as well the debts of

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"It might be added, that in the Journal of Septr 14 the clause to which the proviso was added now a part of the Constn viz—'but all duties, imposts & excises shall be uniform throughout the U.S.,' is called the 'first' of course a '*single*' clause, and it is obvious that the uniformity required by the proviso implies that what is referred to was a part of the same clause with the proviso not an antecedent clause altogether separated from it."—*Mad. Mss.*

[1] See *ante*, Vol. IV., p. 253 *et seq.*

the U. States, as the debts incurred by the *several* States *during the late war*, for the *common defence* and *general welfare;* conforming herein to the 8th of the Articles of Confederation, the language of which is, that "all charges of war, and all other expenses that shall be incurred for the common defence and general welfare, and allowed by the U. S. in Congress assembled, shall be defrayed out of a common Treasury" &c.

On the 22d of Augst the committee of five reported among other additions to the clause *giving power* "to lay and collect taxes imposts & excises," a clause in the words following, "for payment of the debts and necessary expenses," with a proviso qualifying the duration of Revenue laws.

This Report being taken up, it was moved, as an amendment, that the clause should read, "The Legislature *shall* fulfill the engagements and discharge the debts of the U. States."

It was then moved to strike out "discharge the debts," and insert, "liquidate the claims," which being rejected, the amendment was agreed to as proposed, viz: "The Legislature *shall* fulfil the engagements and discharge the debts of the United States."

On the 23d of Augst the clause was made to read "The Legislature shall fulfil the engagements and discharge the debts of the U. States, and shall have the power to lay & collect taxes duties imposts & excises' the two powers relating to taxes & debts being merely transposed.

On the 25th of August the clause was again altered so as to read "All debts contracted and engagements entered into by or under the authority of Congress, [the Revolutionary Congress] shall be as valid under this constitution as under the Confederation."

This amendment was followed by a proposition, referring to the powers to lay & collect taxes, &c. and to discharge the [*old* debts] to add, "for payment of *said* debts, and for defraying the *expenses that shall be* incurred *for the common defence and general welfare*." The proposition was disagreed to, one State only voting for it.

Sep[r] 4. The committee of eleven reported the following modification—"The Legislature shall have power to lay & collect taxes duties imposts and excises, to pay the debts and provide for the common defence & general welfare;" thus retaining the terms of the Articles of Confederation, & covering by the general term "debts," those of the old Congress.

A special provision in this mode could not have been necessary for the debts of the new Congress: For a power to provide money, and a power to perform certain acts of which money is the ordinary & appropriate means, must of course carry with them a power to pay the expense of performing the acts. Nor was any special provision for debts proposed, till the case of the Revolutionary debts was brought into view; and it is a fair presumption from the course of the varied propositions which have been noticed, that but for the old debts, and their association with the terms "common defence & general welfare," the clause would have remained as reported in the first draft of a Constitution, expressing generally, "a power in Congress to lay and collect taxes duties imposts & excises;" without any addition of the phrase, "to provide for the common defence & general welfare." With this addition, indeed, the language of the clause being in conformity with that of the clause in the Articles of Confederation, it would be qualified, as in those articles, by the specification of powers subjoined to it. But there is sufficient reason to suppose that the terms in question would not have been introduced but for the introduction of the old debts, with which they happened to stand in a familiar tho' inoperative relation. Thus introduced, however, they passed undisturbed thro' the subsequent stages of the Constitution.

If it be asked why the terms "common defence & general welfare," if not meant to convey the comprehensive power which taken literally they express, were not qualified & explained by some reference to the particular powers subjoined, the answer is at hand, that altho' it might easily have been done, and experience shows it might be well if it had been done,

yet the omission is accounted for by an inattention to the phraseology, occasioned, doubtless, by its identity with the harmless character attached to it in the instrument from which it was borrowed.

But may it not be asked with infinitely more propriety, and without the possibility of a satisfactory answer, why, if the terms were meant to embrace not only all the powers particularly expressed, but the indefinite power which has been claimed under them, the intention was not so declared; why, on that supposition, so much critical labor was employed in enumerating the particular powers, and in defining and limiting their extent?

The variations & vicissitudes in the modification of the clause in which the terms "common defence & general welfare" appear, are remarkable, and to be no otherwise explained than by differences of opinion concerning the necessity or the form of a constitutional provision for the debts of the Revolution; some of the members apprehending improper claims for losses, by depreciated emissions of bills of credit; others an evasion of proper claims if not positively brought within the authorized functions of the new Gov^{t}, and others again considering the past debts of the U. States as sufficiently secured by the principle that no change in the Gov^{t} could change the obligations of the nation. Besides the indications in the Journal, the history of the period sanctions this explanation.

But it is to be emphatically remarked, that in the multitude of motions, propositions, and amendments, there is not a single one having reference to the terms "common defence & general welfare," unless we were so to understand the proposition containing them made on Aug. 25, which was disagreed to by all the States except one.

The obvious conclusion to which we are brought is, that these terms copied from the Articles of Confederation, were regarded in the new as in the old instrument, merely as general terms, explained & limited by the subjoined specifica-

tions; and therefore requiring no critical attention or studied precaution.

If the *practice* of the Revolutionary Congress be pleaded in opposition to this view of the case, the plea is met by the notoriety that on several accounts the practice of that Body is not the expositor of the "Articles of Confederation." These articles were not in force till they were finally ratified by Maryland in 1781. Prior to that event, the power of Congress was measured by the exigencies of the war, and derived its sanction from the acquiescence of the States. After that event, habit and a continued expediency, amounting often to a real or apparent necessity, prolonged the exercise of an undefined authority; which was the more readily overlooked, as the members of the body held their seats during pleasure, as its acts, particularly after the failure of the Bills of Credit, depended for their efficacy on the will of the States; and as its general impotency became manifest. Examples of departure from the prescribed rule, are too well known to require proof. The case of the old Bank of N. America might be cited as a memorable one. The incorporating ordinance grew out of the inferred necessity of such an Institution to carry on the war, by aiding the finances which were starving under the neglect or inability of the States to furnish their assessed quotas. Congress was at the time so much aware of the deficient authority, that they recommended it to the State Legislatures to pass laws giving due effect to the ordinance; which was done by Pennsylvania and several other States. In a little time, however, so much dissatisfaction arose in Pennsylvania, where the bank was located, that it was proposed to repeal the law of the State in support of it. This brought on attempts to vindicate the adequacy of the power of Congress to incorporate such an Institution. Mr. Wilson, justly distinguished for his intellectual powers, being deeply impressed with the importance of a bank at such a crisis, published a small pamphlet, entitled "Considerations on the Bank of N. America," in which he endeavoured to derive the

power from the *nature* of the *union* in which the Colonies were declared & became independent States, and also from the tenor of the "Articles of Confederation" themselves.[1] But what is particularly worthy of notice is, that with all his anxious search in those articles for such a power, he never glanced at the terms "common defence & general welfare" as a source of it. He rather chose to rest the claim on a recital in the text, "that for the more convenient management of the *general* interests of the *United* States, Delegates shall be annually appointed to meet in Congress, which, he said, implied that the *United* States had *general* rights, *general* powers, and *general* obligations, not derived from *any* particular State, nor from *all* the particular States taken separately, but *resulting* from the *union* of the whole," these general powers not being controuled by the Article declaring that each State retained *all* powers not granted by the articles, because "the *individual* States *never* possessed & could not retain a *general* power over the others."

The authority & argument here resorted to, if proving the ingenuity & patriotic anxiety of the author on one hand, show sufficiently on the other, that the terms common defence & general welfare c.d not, according to the known acceptation of them, avail his object.

That the terms in question were not suspected in the Convention which formed the Constitution of any such meaning as has been constructively applied to them may be pronounced with entire confidence. For it exceeds the possibility of belief, that the known advocates in the Convention for a jealous grant & cautious definition of Federal powers, should have silently permitted the introduction of words or phrases in a sense rendering fruitless the restrictions & definitions elaborated by them.

Consider for a moment the immeasurable difference between the Constitution limited in its powers to the enumerated ob-

[1] Wilson's pamphlet may be found in his *Works* (Philadelphia, 1804), iii., 397.

jects; and expounded as it would be by the import claimed for the phraseology in question. The difference is equivalent to two Constitutions, of characters essentially contrasted with each other, the one possessing powers confined to certain specified cases, the other extended to all cases whatsoever; for what is the case that would not be embraced by a general power to raise money, a power to provide for the general welfare, and a power to pass all laws necessary & proper to carry these powers into execution; all such provisions and laws superseding, at the same time, all local laws & constitutions at variance with them. Can less be said, with the evidence before us furnished by the Journal of the Convention itself, than that it is impossible that such a Constitution as the latter would have been recommended to the States by all the members of that Body whose names were subscribed to the instrument.

Passing from this view of the sense in which the terms common defence & general welfare were used by the Framers of the Constitution, let us look for that in which they must have been understood by the Conventions, or rather by the people, who thro' their Conventions, accepted & ratified it. And here the evidence is if possible still more irresistible, that the terms could not have been regarded as giving a scope to federal legislation, infinitely more objectionable than any of the specified powers which produced such strenuous opposition, and calls for amendments which might be safeguards against the dangers apprehended from them.

Without recurring to the published debates of those Conventions, which, as far as they can be relied on for accuracy, would it is believed not impair the evidence furnished by their recorded proceedings, it will suffice to consult the list of amendments proposed by such of the Conventions as considered the powers granted to the new Government too extensive or not safely defined.

Besides the restrictive & explanatory amendments to the text of the Constitution it may be observed, that a long list was premised under the name and in the nature of "Declara-

tions of Rights;" all of them indicating a jealousy of the federal powers, and an anxiety to multiply securities against a constructive enlargement of them. But the appeal is more particularly made to the number & nature of the amendments proposed to be made specific & integral parts of the Constitutional text.

No less than seven States, it appears, concurred in adding to their ratifications a series of amendments w^ch^ they deemed requisite. Of these amendments, *nine* were proposed by the Convention of Massachusetts, *five* by that of S. Carolina, *twelve* by that of N. Hampshire, *twenty* by that of Virginia, *thirty-three* by that of N. York, *twenty-six* by that of N. Carolina, *twenty-one* by that of R. Island.

Here are a majority of the States, proposing amendments, in one instance thirty-three by a single State; all of them intended to circumscribe the powers granted to the General Government, by explanations restrictions or prohibitions, without including a single proposition from a single State referring to the terms common defence & general welfare; which if understood to convey the asserted power, could not have failed to be the power most strenuously aimed at, because evidently more alarming in its range, than all the powers objected to put together; and that the terms should have passed altogether unnoticed by the many eyes w^ch^ saw danger in terms & phrases employed in some of the most minute & limited of the enumerated powers, must be regarded as a demonstration, that it was taken for granted that the terms were harmless, because explained & limited, as in the "Articles of Confederation," by the enumerated powers which followed them.

A like demonstration, that these terms were not understood in any sense that could invest Congress with powers not otherwise bestowed by the constitutional charter, may be found in what passed in the first session of the first Congress, when the subject of amendments was taken up, with the conciliatory view of freeing the Constitution from objections which had

been made to the extent of its powers, or to the unguarded terms employed in describing them. Not only were the terms "common defence and general welfare" unnoticed in the long list of amendments brought forward in the outset; but the Journals of Cong[s] show that, in the progress of the discussions, not a single proposition was made in either branch of the Legislature which referred to the phrase as admitting a constructive enlargement of the granted powers, and requiring an amendment guarding against it. Such a forbearance & silence on such an occasion, and among so many members who belonged to the part of the nation which called for explanatory & restrictive amendments, and who had been elected as known advocates for them, cannot be accounted for without supposing that the terms "common defence & general welfare" were not at that time deemed susceptible of any such construction as has since been applied to them.

It may be thought, perhaps, due to the subject, to advert to a letter of Oct[r.] 5, 1787, to Samuel Adams, and another of Oct. 16 of the same year to the Governor of Virginia, from R. H. Lee, in both which it is seen that the terms had attracted his notice, and were apprehended by him "to submit to Congress every object of human Legislation." But it is particularly worthy of Remark, that, although a member of the Senate of the U. States, when amendments of the Constitution were before that house, and sundry additions & alterations were there made to the list sent from the other, no notice was taken of these terms as pregnant with danger. It must be inferred that the opinion formed by the distinguished member at the first view of the Constitution, & before it had been fully discussed & elucidated, had been changed into a conviction that the terms did not fairly admit the construction he had originally put on them, and therefore needed no explanatory precaution ag[st.] it.

Allow me, my dear sir, to express on this occasion, what I always feel, an anxious hope that as our Constitution rests on a middle ground between a form wholly national and one

merely federal, and on a division of the powers of Gov^t. between the States in their united character and in their individual characters, this peculiarity of the system will be kept in view, as a key to the sound interpretation of the instrument, and a warning ag^st. any doctrine that would either enable the States to invalidate the powers of the U. States, or confer all power on them.

I close these remarks which I fear may be found tedious with assurances of my great esteem, and best regards.[1]

[1] A final paragraph for the letter of Nov^r. 27, 1830 to M^r. Stevenson.

"Allow me dear Sir to express on this occasion, what I always feel, an anxious hope that as our Constitution rests on a middle ground between a form, wholly national, and one merely federal, and on a division of the powers of Gov^t. between the States in their united character and in their individual characters, this peculiarity of the system will be kept in view as a key to the sound interpretation of the Instrument and a warning ag^st any doctrine that would either enable the States to invalidate the powers of the U. States, or confer all power on them."
—*Madison's Note.*

The following is not in the Madison MSS., but is from the *Works* of Madison (Cong. Ed.):

Supplement to the letter of November 27, 1830, to A. Stevenson, on the phrase "common defence and general welfare."—On the power of indefinite appropriation of money by Congress.

It is not to be forgotten, that a distinction has been introduced between a power merely to appropriate money to the common defence & general welfare, and a power to employ all the means of giving full effect to objects embraced by the terms.

1. The first observation to be here made is, that an *express* power to appropriate money authorized to be raised, to objects authorized to be provided for, could not, as seems to have been supposed, be at all necessary; and that the insertion of the power "to pay the debts," &c., is not to be referred to that cause. It has been seen, that the particular expression of the power originated in a cautious regard to debts of the United States antecedent to the radical change in the Federal Government; and that, but for that consideration, no particular expression of an appropriating power would probably have been thought of. An express power to raise money, and an express power (for example) to raise an army, would surely imply a power to use the money for that purpose. And if a doubt could possibly arise as to the

TO JAMES K. TEFFT. MAD. MSS.

Dec^r. 3, 1830.

I have rec^d. Sir, your letter of Nov^r. 17 accompanied by one from the Rev^d. M^r. Sprague and in compliance with your request,[1] I enclose autographs of certain individuals such as you refer to. I would

implication, it would be completely removed by the express power to pass all laws necessary and proper in such cases.

2. But admitting the distinction as alleged, the appropriating power to *all* objects of "common defence and general welfare" is itself of sufficient magnitude to render the preceding views of the subject applicable to it. Is it credible that such a power would have been unnoticed and unopposed in the Federal Convention? in the State Conventions, which contended for, and proposed restrictive and explanatory amendments? and in the Congress of 1789, which recommended so many of these amendments? A power to impose *unlimited taxes* for *unlimited purposes* could never have escaped the sagacity and jealousy which were awakened to the many inferior and minute powers which were criticised and combated in those public bodies.

3. A power to appropriate money, without a power to apply it in execution of the object of appropriation, could have no effect but to lock it up from public use altogether; and if the appropriating power carries with it the power of application and execution, the distinction vanishes. The power, therefore, means nothing, or what is worse than nothing, or it is the same thing with the sweeping power "to provide for the common defence and general welfare."

4. To avoid this dilemma, the consent of the States is introduced as justifying the exercise of the power in the full extent within their respective limits. But it would be a new doctrine, that an extra-constitutional consent of the parties to a Constitution could amplify the jurisdiction of the constituted Government. And if this could not be done by the concurring consents of all the States, what is to be said of the doctrine that the consent of an individual State could authorize the application of money belonging to all the States to its individual purposes? Whatever be the presumption that the Government of the whole would not abuse such an authority by a partiality in expending the public treasure, it is not the less necessary to prove the existence of the power. The Constitution is a limited one, possessing no

[1] Tefft wrote from Savannah, introduced by William B. Sprague of the same place.

willingly have given with their names, more of their writings, but could not do it without mutilating the sense, or embracing matter of a private nature. There is a difficulty, particularly where the letter does not close on the first or third page. Several other autographs w.d have been added those of Mr. Pat. Henry, George Mason & Geo. Wythe,

power not actually given, and carrying on the face of it a distrust of power beyond the distrust indicated by the ordinary forms of free Government.

The peculiar structure of the Government, which combines an equal representation of unequal numbers in one branch of the Legislature, with an equal representation of equal numbers in the other, and the peculiarity which invests the Government with selected powers only, not intrusting it even with every power withdrawn from the local governments, prove not only an apprehension of abuse from ambition or corruption in those administering the Government, but of oppression or injustice from the separate interests or views of the constituent bodies themselves, taking effect through the administration of the Government. These peculiarities were thought to be safeguards due to minorities having peculiar interests or institutions at stake, against majorities who might be tempted by interest or other motives to invade them; and all such minorities, however composed, act with consistency in opposing a latitude of construction, particularly that which has been applied to the terms "common defence and general welfare," which would impair the security intended for minor parties. Whether the distrustful precaution interwoven in the Constitution was or was not in every instance necessary; or how far, with certain modifications, any farther powers might be safely and usefully granted, are questions which were open for those who framed the great Federal Charter, and are still open to those who aim at improving it. But while it remains as it is, its true import ought to be faithfully observed; and those who have most to fear from constructive innovations ought to be most vigilant in making head against them.

But it would seem that a resort to the consent of the State Legislatures, as a sanction to the appropriating power, is so far from being admissible in this case, that it is precluded by the fact that the Constitution has expressly provided for the cases where that consent was to sanction and extend the power of the national Legislature. How can

but I found that their letters on my files, had been taxed to the full in that way.[1]

I avail myself Sir of your proferred kindness, by asking you to procure for me, if it can be conveniently done, such of the numbers of the "Georgian," preceding No. 124, Ap[l]. 21, 1828, & succeeding No. 129, Ap[l] 26, 1828, as contain notes of Maj[r]. Pierce in that Convention; forwarding with them the charge of the Editors, which will be remitted

it be imagined that the Constitution, when pointing out the cases where such an effect was to be produced, should have deemed it necessary to be positive and precise with respect to such minute spots as forts, &c., and have left the general effect ascribed to such consent to an argumentative, or, rather, to an arbitrary construction? And here again an appeal may be made to the incredibility that such a mode of enlarging the sphere of federal legislation should have been unnoticed in the ordeals through which the Constitution passed, by those who were alarmed at many of its powers bearing no comparison with that source of power in point of importance.

5. Put the case that money is appropriated to a canal[2] to be

[1] In the draft of the letter was the following sentence against which Madison wrote, "extract":

"[In the year 1828 I rec[d]. from J. V. Bevan sundry numbers of the 'Savannah Georgian,' containing *continuations* of the notes of Maj[r]. Pierce in the Federal Convention of 1827. They were probably sent on account of a marginal suggestion of inconsistency between language held by me in the Convention with regard to an Executive Veto, and a use made of the power by myself, when in the Executive administration. The inconsistency is done away by the distinction, not averted to, between an *absolute* veto, to which the language was applied, and the *qualified* veto which was exercised.]"

[2] On more occasions than one, it has been noticed in Congressional debates that propositions appear to have been made in the Convention of 1787 to give to Congress the power of opening canals, and to have been rejected; and that Mr. Hamilton, when contending in his report in favour of a bank for a liberal construction of the powers of Congress, admitted that a canal might be beyond the reach of those powers.—*Madison's Note.*

to them. It will be matter of curiosity at least to compare the notes taken on the same subjects by different members of the Body.

If M^r^ Sprague be still with you, be pleased to make known to him that his letter was rec^d^. & duly appreciated, and to accept for yourself my respects & salutations.

Autographs sent of J. Adams J. Q. Adams James Monroe Ed. Pendleton R. H. Lee Alex^r^ Hamilton

cut within a particular State; how and by whom, it may be asked, is the money to be applied and the work to be executed? By agents under the authority of the General Government? then the power is no longer a mere appropriating power. By agents under the authority of the States? then the State becomes either a branch or a functionary of the Executive authority of the United States; an incongruity that speaks for itself.

6. The distinction between a pecuniary power only, and a plenary power "to provide for the common defence and general welfare," is frustrated by another reply to which it is liable. For if the clause be not a mere introduction to the enumerated powers, and restricted to them, the power to provide for the common defence and general welfare stands as a distinct substantive power, the first on the list of legislative powers; and not only involving all the powers incident to its execution, but coming within the purview of the clause concluding the list, which expressly declares that Congress may make all laws necessary and proper to carry into execution the *foregoing* powers vested in Congress.

The result of this investigation is, that the terms "common defence and general welfare" owed their induction into the text of the Constitution to their connexion in the "Articles of Confederation," from which they were copied, with the debts contracted by the old Congress, and to be provided for by the new Congress; and are used in the one instrument as in the other, as general terms, limited and explained by the particular clauses subjoined to the clause containing them; that in this light they were viewed throughout the recorded proceedings of the Convention which framed the Constitution; that the same was the light in which they were viewed by the State Conventions which ratified the Constitution, as is shown by the records of their proceedings; and that such was the case also in the first Con-

E. Gerry Alb. Gallatin H. Dearborn Henry Lee (Rev^{y} officer) Jacob Brown (Maj^{r} General) A. J. Dallas Wm. Eustis William Pinkney (of Mary^{d}) Rob. R. Livingston DeWitt Clinton.

TO REYNOLDS CHAPMAN. MAD. MSS.

Jan^{y} 6, 1831.

DEAR SIR,—I have rec^{d} yours, enclosing the manuscript of J. M. Patton, on the subject of which it is intimated that my opinion would be acceptable.

gress under the Constitution, according to the evidence of their journals, when digesting the amendments afterward made to the Constitution. It equally appears that the alleged power to appropriate money to the "common defence and general welfare" is either a dead letter, or swells into an unlimited power to provide for unlimited purposes, by all the means necessary and proper for those purposes. And it results finally, that if the Constitution does not give to Congress the unqualified power to provide for the common defence and general welfare, the defect cannot be supplied by the consent of the States, unless given in the form prescribed by the Constitution itself for its own amendment.

As the people of the United States enjoy the great merit of having established a system of Government on the basis of human rights, and of giving to it a form without example, which, as they believe, unites the greatest national strength with the best security for public order and individual liberty, they owe to themselves, to their posterity, and to the world, a preservation of the system in its purity, its symmetry, and its authenticity. This can only be done by a steady attention and sacred regard to the chartered boundaries between the portion of power vested in the Government over the whole, and the portion undivested from the several Governments over the parts composing the whole; and by a like attention and regard to the boundaries between the several departments, Legislative, Executive, and Judiciary, into which the aggregate power is divided. Without a steady eye to the landmarks between these departments, the danger is always to be apprehended, either of mutual encroachments, and alternate ascendencies incompatible with the tranquil enjoyment of private rights, or of a concentration of all the departments of power into a single one, universally acknowledged to be fatal to public liberty.

The paper affords sufficient indication of the talents ascribed to the author. Of his honourable principles I believe no one doubts. And with these qualifications for serving his country, it may be well for it that he is making its Institutions & interests objects of systematic attention. It is with pleasure, therefore, that I comply, however imperfectly, with the request in your letter, regretting only that the compliance is so imperfect, and that it may less accord in some respects with the ideas of [Mr. Patton] than might be agreeable to both of us. I am persuaded, nevertheless, that his candor will be equal to my frankness.

For my opinion on a Tariff for the encouragement of domes-

And without an equal watchfulness over the great landmarks between the General Government and the particular Governments, the danger is certainly not less, of either a gradual relaxation of the band which holds the latter together, leading to an entire separation, or of a gradual assumption of their powers by the former, leading to a consolidation of all the Governments into a single one.

The two vital characteristics of the political system of the United States are, first, that the Government holds its powers by a charter granted to it by the people; second, that the powers of Government are formed into two grand divisions—one vested in a Government over the whole community, the other in a number of independent Governments over its component parts. Hitherto charters have been written grants of privileges by Governments to the people. Here they are written grants of power by the people to their Governments.

Hitherto, again, all the powers of Government have been, in effect, consolidated into one Government, tending to faction and a foreign yoke among a people within narrow limits, and to arbitrary rule among a people spread over an extensive region. Here the established system aspires to such a division and organization of power as will provide at once for its harmonious exercise on the true principles of liberty over the parts and over the whole, notwithstanding the great extent of the whole; the system forming an innovation and an epoch in the science of Government no less honorable to the people to whom it owed its birth, than auspicious to the political welfare of all others who may imitate or adopt it.

As the most arduous and delicate task in this great work lay in the untried demarkation of the line which divides the general and the particular Governments by an enumeration and definition of the

tic manufactures I may refer to my letters to M^r. Cabell in 1828, which will show the ground on which I maintained its constitutionality. It avoids the question quo animo? in using an impost for another purpose than revenue; a question which, tho' not in such a case within a judicial purview, would be asked & pressed in discussions appealing to public opinion.

If a duty can be constitutionally laid on imports, not for the purpose of revenue, which may be reduced or destroyed by the duty, but as a means of retaliating the commercial regulations of foreign countries, which regulations have for their object, sometimes their sole object, the encouragem^t. of their manufactures, it would seem strange to infer that an impost for the encouragement of domestic manufactures was unconstitutional because it was not for the purpose of revenue, and the more strange, as an impost for the protection & encouragem^t. of national manufactures is of much more general & familiar practice than as a retaliation of the injustice of foreign regulations of commerce. It deserves consideration whether there be not other cases in which an impost not for revenue must be admitted, or necessary interests be provided for by a more strained construction of the specified powers of Congress.

With respect to the existing tariff, however justly it may be complained of in several respects, I cannot but view the evils charged on it as greatly exaggerated. One cause of the excitement is an impression with many, that the whole amount paid by the consumers goes into the pockets of the manufacturers; whilst that is the case so far only as the articles are actually manufactured in the country, which in some instances is in a very inconsiderable proportion; the residue of the amount passing like other taxes into the Public Treasury, and to be

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powers of the former, more especially the legislative powers; and as the success of this new scheme of polity essentially depends on the faithful observance of this partition of powers, the friends of the scheme, or rather the friends of liberty and of man, cannot be too often earnestly exhorted to be watchful in marking and controlling encroachments by either of the Governments on the domain of the other.

replaced if withdrawn by other taxes. The other cause is the unequal operation of the tax resulting from an unequal consumption of the article paying it in different sections; and in some instances, this is doubtless a striking effect of the existing tariff. But, to make a fair estimate of the evil, it must be inquired how far the sections, overburdened in some instances, may not be underburdened in others, so as to diminish if not remove the inequality. Unless a tariff be a compound one, it cannot, in such a country as this, be made equal either between different sections or among different classes of citizens; and as far as a compound tariff can be made to approach equality, it must be by such modifications as will balance inequalities against each other. The consumption of coarse woollens used by the negroes in the South may be greater than in the North, and the tariff on them be disproportionately felt in that section. Before the change in the duties on tea coffee & molasses, the greater consumption elsewhere of these articles, and of the article of sugar, from habit, and a population without slaves, might have gone far towards equalizing the burden; possibly have exceeded that effect.

Be this as it may, I cannot but believe, whatever well-founded complaints may be ag$^{st.}$ the tariff, that, as a cause of the general sufferings of the country, it has been vastly overrated; that if wholly repealed, the limited relief would be a matter of surprize; and that if the portion only having not revenue, but manufactures for its object, were struck off, the general relief would be little felt.

In looking for the great and radical causes of the pervading embarrassments, they present themselves at once 1. in the fall almost to prostration in the price of land, evidently the effect of the quantity of cheap Western land in the market. 2. in the depreciating effect on the products of land, from the increased products resulting from the rapid increase of population, and the transfer of labour from a less productive to a more productive soil, not in effect more distant from the common markets.

It is not wonderful that the price of Tob°. should fall when the export thro' N. Orleans has for the last three years added an annual average of near thirty thousand Hhds. to the export of the old Tob°. States, or that the price of cotton should have felt a like effect from like causes. It has been admitted by the "Southern Review" that the fall of cotton occurred prior even to the tariff of 1824. The prices of both Tob°. & flour have had a greater fall than that of cotton.

To this solution of the problem of the depressed condition of the country may be added the fact not peculiar to Virginia that the fall in the prices of land & its products found the people much in debt, occasioned by the tempting liberality of the banks and the flattering anticipations of crops and prices.

It may not be out of place to observe, that in deciding the general question of a protective policy, the public opinion is in danger of being unduly influenced by the actual state of things, as it may happen to be a period of war or of peace. In the former case, the departure from the "Let alone" theory may be pressed too far. In the latter, the fair exceptions to it may be too much disregarded. The remark will be verified by comparing the public opinion on the subject, during the late war and at the close of it, with the change produced by the subsequent period of peace. It cannot be doubted, that on the return of a state of war, even should the U. S. not be a party, the reasonings ag^st. the protection of certain domestic manufactures would lose much of the public favour; perhaps too much, considering the increased ability of the U. S. to protect their foreign commerce; which would greatly *diminish* the risks & expence of transportation, though not the war prices in the manufacturing countries.

For my general opinion on the question of Internal Improvements, I may refer to the veto message ag^st. the "Bonus Bill," at the close of the session of Cong^s. in March 1817.[1] The message denies the constitutionality as well of the appropriating as of the Executing and Jurisdictional branches of

[1] *Ante*, Vol. VIII., p. 386.

the power. And my opinion remains the same, subject, as heretofore, to the exception of particular cases, where a reading of the Constitution, different from mine may have derived from a continued course of practical sanctions an authority sufficient to overrule individual constructions.

It is not to be wondered that doubts & difficulties should occur in expounding the Constitution of the U. States. Hitherto the aim, in well-organized Governments, has been to discriminate & distribute the Legislative, Executive, and Judiciary powers; and these sometimes touch so closely or rather run the one so much into the other, as to make the task difficult, and leave the lines of division obscure. A settled practice, enlightened by occurring cases, and obviously conformable to the public good, can alone remove the obscurity. The case is parallel in new statutes on complex subjects.

In the Constitution of the U. S. where each of these powers is divided, and portions alloted to different Governments, and where a language technically appropriate may be deficient, the wonder w^d. be far greater if different rules of exposition were not applied to the text by different commentators.

Thus it is found that in the case of the Legislative department particularly, where a division & definition of the powers according to their specific objects is most difficult, the Instrument is read by some as if it were a Constitution for a single Gov^t. with powers co-extensive with the general welfare, and by others interpreted as if it were an ordinary statute, and with the strictness almost of a penal one.

Between these adverse constructions an intermediate course must be the true one, and it is hoped that it will finally if not otherwise settled be prescribed by an amendment of the Constitution. In no case is a satisfactory one more desirable than in that of internal improvements, embracing Roads, Canals, Light Houses, Harbours, Rivers, and other lesser objects.

With respect to Post Roads, the general view taken of them in the manuscript, shows a way of thinking on the subject with which mine substantially accords. Roads, when plainly ne-

cessary for the march of troops and for military transportations, must speak for themselves, as occasions arise.

Canals as an Item in the general improvement of the Country have always appeared to me not to be embraced by the authority of Cong$^{s.}$ It may be remarked that M$^{r.}$ Hamilton, in his Report on the Bank, when enlarging the range of construction to the utmost of his ingenuity, admitted that Canals were beyond the sphere of Federal Legislation.

Light Houses having a close and obvious relation to navigation and external commerce, and to the safety of public as well as private ships, and having rec$^{d.}$ a positive sanction and general acquiescence from the commencement of the Federal Government, the constitutionality of them is I presume not now to be shaken if it were ever much contested. It seems, however, that the power is liable to great abuse, and to call for the most careful & responsible scrutiny into every particular case before an application be complied with.

Harbours, within the above character, seem to have a like claim on the Federal authority. But what an interval between such a Harbour as that of N. York or N. Orleans and the mouth of a creek forming an outlet for the trade of a single State or part of a State into a navigable stream; and the principle of which would authorize the improvement of every road leading out of the State towards a destined market.

What again the interval between clearing of its sawyers &c. the Mississippi the commercial highway for half the nation, and removing obstructions by which the navigation of an inconsiderable stream may be extended a few miles only within a single State.

The navigation of the Mississippi is so important in a national view, so essentially belongs to the foreign commerce of many States, and the task of freeing it from obstructions is so much beyond the means of a single State, and beyond a feasible concert of all who are interested in it, that claims on the authority and resources of the nation will continue to be, as they have been irresistible. Those who regard it as a case not brought

by these features within the legitimate powers of Congress, must of course oppose the claim, and with it every inferior claim. Those who admit the power as applicable to a case of that description, but disown it in every case not marked by adequate peculiarities, must find, as they can, a line separating this admissible class from the others; a necessity but too often to be encountered in a legislative career.

Perhaps I ought not to omit the remark that altho' I concur in the defect of powers in Congress on the subject of internal improvements, my abstract opinion has been that in the case of Canals particularly, the power would have been properly vested in Congress. It was more than once proposed in the Convention of 1787, & rejected from an apprehension, chiefly that it might prove an obstacle to the adoption of the Constitution. Such an addition to the Federal powers was thought to be strongly recommended by several considerations. 1. As Congress would possess, exclusively, the sources of Revenue most productive and least unpopular, that body ought to provide & apply the means for the greatest & most costly works. 2. There would be cases where Canals would be highly important in a national view, and not so in a local view. 3. Cases where, tho' highly important in a national view, they might violate the interest real or supposed of the State through which they would pass; of which an example might now be cited in the Chesapeake & Delaware canal, known to have been viewed in an unfavourable light by the State of Delaware. 4. There might be cases where Canals, or a chain of Canals, would pass through sundry States, and create a channel and outlet for their foreign commerce, forming at the same time a ligament for the Union, and extending the profitable intercourse of its members, and yet be of hopeless attainment if left to the limited faculties and joint exertions of the States possessing the authority.

It cannot be denied, that the abuse to which the exercise of the power in question has appeared to be liable in the hands of Congress, is a heavy weight in the scale opposed to it. But

may not the evil have grown, in a great degree, out of a casual redundancy of revenue, and a temporary apathy to a burden bearing indirectly on the people, and mingled, moreover, with the discharge of debts of peculiar sanctity. It might not happen, under ordinary circumstances, that taxes even of the most disguised kind, would escape a wakeful controul on the imposition & application of them. The late reduction of duties on certain imports and the calculated approach of an extinguishment of the public debt, have evidently turned the popular attention to the subject of taxes, in a degree quite new; and it is more likely to increase than to relax. In the event of an amendment of the Constitution, guards might be devised against a misuse of the power without defeating an important exercise of it. If I err or am too sanguine in the views I indulge it must be ascribed to my conviction that canals, railroads, and turnpikes are at once the criteria of a wise policy and causes of national prosperity; that the want of them will be a reproach to our Republican system, if excluding them, and that the exclusion, to a mortifying extent will ensue if the power be not lodged where alone it can have its due effect.

Be assured of my great esteem & accept my cordial salutations.

TO CHARLES J. INGERSOLL. MAD. MSS.

MONTPELLIER, Feb$^{y.}$ 2, 1831.

DEAR SIR,—I have rec$^{d.}$ your letter of Jan$^{y.}$ 21, asking—

1. Is there any State power to make Banks?

2. Is the Federal power as it has been exercised, or as proposed to be exercised by President Jackson preferable?

The evil which produced the prohibitory clause in the Constitution of the U. S. was the practice of the

States in making bills of credit, and in some instances appraised property, "a legal tender." If the notes of the State Banks therefore, whether chartered or unchartered be made a legal tender, they are prohibited; if not made a legal tender, they do not fall within the prohibitory clause. The N°. of the "Federalist" [No. XLIV.] referred to was written with that view of the subject; and this, with probably other contemporary expositions, and the uninterrupted practice of the States in creating and permitting Banks, without making their notes a legal tender, would seem to be a bar to the question, if it were not inexpedient now to agitate it.

A virtual and incidental enforcement of the depreciated notes of the State Banks, by their crowding out a sound medium, tho' a great evil, was not foreseen; and if it had been apprehended, it is questionable whether the Constitution of the U. S. which had so many obstacles to encounter would have ventured to guard against it by an additional obstacle. A virtual and it is hoped an adequate remedy, may hereafter be found in the refusal of State paper, when debased, in any of the Federal transactions; and in the controul of the Federal Bank, this being itself controuled from suspending its specie payments by the public authority.

On the other question I readily decide against the project recommended by the President. Reasons more than sufficient appear to have been presented to the public in the Reviews and other comments which it has called forth. How far a hint for it may

have been taken from Mr. Jefferson I know not. The kindred ideas of the latter may be seen in his Memoirs &c. vol. 4. page 196, 207, 526 and his view of the State Banks vol. 4, p. 199 & 220.[1]

There are sundry statutes of Virga. prohibiting the circulation of notes payable to bearer, whether issued by individuals, or unchartered banks.

These observations little new or important as they may be, would have been more promptly furnished, but for an indisposition in which your letter found me, and which has not yet entirely left me. I hope this will find you in good health, and you have my best wishes for its continuance, and the addition of every other blessing.

TO THEODORE SEDGWICK, JR. MAD. MSS.

MONTPR., Febry. 12, 1831.

SIR,—I have recd. your letter of Jany. 27, wch. was retarded a few days, by going in the first instance to Richmond.

You ask "whether Mr. Livingston (formerly Governor of N. Jersey) took an active part in the debates (of the Fedl. Convention in 1787) and whether he was considered as having a leaning towards the federal party & principles;" adding "that you will be obliged by any further information it may be in my power to give you."

Mr. Livingston did not take his seat in the Convention till some progress had been made in the task committed to it; and he did not take an active part

[1] The reference is to the edition of 1830.

in its debates; but he was placed on important committees, where it may be presumed he had an agency and a due influence. He was personally unknown to many, perhaps most of the members; but there was a predisposition in all to manifest the respect due to the celebrity of his name.

I am at a loss for a precise answer to the question whether he had a leaning to the federal party and principles. Presuming that by the party alluded to, is meant those in the Convention who favored a more enlarged in contradistinction to those who favored a more restricted grant of powers to the Fed[l]. Gov[t]. I can only refer to the recorded votes which are now before the public; and these being by States, not by heads, individual opinions are not disclosed by them. The votes of N. Jersey corresponded generally with the plan offered by M[r]. Patterson; but the main object of that being to secure to the smaller States an equality with the larger in the structure of the Gov[t]. in opposition to the outline previously introduced, which had reversed the object, it is difficult to say what was the degree of power to which there might be an abstract leaning. The two subjects, the structure of the Gov[t]. and the *quantum* of power entrusted to it, were more or less inseparable in the minds of all, as depending a good deal the one on the other. After the compromise which gave the small States an equality in one branch of the Legislature, and the large States an inequality in the other branch, the abstract leaning of opinions would better appear. With those how-

ever who did not enter into debate, and whose votes could not be distinguished from those of their State colleagues, their opinions could only be known among themselves or to their particular friends.

I know not sir that I can give you any of the further information you wish that is not attainable with more authenticity & particularity from other sources. My acquaintance with Gov^r. Livingston was limited to an exchange of the common civilities, & these to the period of the Convention. In my youth I passed several years in the College of N. Jersey, of which he was a Trustee, and where his two sons, William & the late member of the Supreme Court of the U. S. were fellow students. I recollect to have seen him there in his capacity of Trustee, and to have heard him always spoken of as among the distinguished lawyers, and as conspicuous among the literary patriots of N. J. I recollect, particularly, that he was understood to be one of the authors of a work entitled "The Independent Reflector," and that some of the papers in it ascribed to him, being admired for the energy & eloquence of their composition, furnished occasionally to the students orations for the Rostrum, which were alternately borrowed from books & composed by themselves.

I regret sir that I have not been able to make a more important contribution for the biographical memoir you meditate. Wishing you all the success in other researches, which the object of them merits, I tender you my respectful and friendly salutations.

TO C. E. HAYNES.[1]

MONTPELLIER, Feb. 25, 1831.

DEAR SIR,—I have received the copy of Judge Clayton's Review of the "Report of the Committee of Ways and Means," for which the envelope informs me that I am indebted to your politeness.

A perusal of the review has left an impression highly favourable to the talents of the author and to the accomplishments of his pen. But I cannot concur in his views and reasonings on some of the material points in discussion; and I must be permitted to think he has done injustice in the remark, "that I seem to have surrendered all my early opinions at discretion."

I am far from regarding a change of opinions, under the lights of experience and the results of improved reflection, as exposed to censure; and still farther from the vanity of supposing myself less in need of that privilege than others. But I had indulged the belief that there were few, if any, of my contemporaries, through the long period and varied scenes of my political life, to whom a mutability of opinion was less applicable, on the great constitutional questions which have agitated the public mind.

The case to which the Judge more especially referred was, doubtless, that of the Bank, which I had originally opposed as unauthorized by the Constitution, and to which I at length gave my official assent. But even here the inconsistency is apparent only, not real; inasmuch as my abstract opinion of the text

[1] From the *Works of Madison* (Cong. Ed.)

of the Constitution is not changed, and the assent was given in pursuance of my early and unchanged opinion, that, in the case of a Constitution as of a law, a course of authoritative expositions sufficiently deliberate, uniform, and settled, was an evidence of the public will necessarily overruling individual opinions. It cannot be less necessary that the meaning of a Constitution should be freed from uncertainty, than that the law should be so. That cases may occur which transcend all authority of precedents must be admitted, but they form exceptions which will speak for themselves and must justify themselves.

I do not forget that the chain of sanctions to the bank power has been considered as broken by a veto of Vice President Clinton to a bill establishing a bank. But it is believed to be quite certain, that the equality of votes which referred the question to his casting vote was occasioned by a union of some, who disapproved the plan of the bank only, with those who denied its constitutionality; and that, on a naked question of constitutionality, a majority of the Senate would have added another sanction, as at a later period was done, to the validity of such an institution.

If this explanation should be found obtrusive, I hope you will recollect that you have been accessory to it, and that it will not prevent an acceptance of the respectful salutations which are cordially offered.

TO JAMES ROBERTSON. MAD. MSS.

Mar. 27, 1831.

DEAR SIR,—I have rec$^{d.}$ your letter of the 8$^{th.}$ but it was not until the 23$^{d.}$ inst.

The veil which was originally over the draft of the resolutions offered in 1798 to the Virg$^{a.}$ Assembly having been long since removed, I may say, in answer to your enquiries, that it was penned by me; and that as it went from me, the 3$^{d.}$ Resolution contained the word "alone," which was stricken out by the House of Delegates.[1] Why the alteration was made, I have no particular knowledge, not being a member at the time. I always viewed it as an error. The term was meant to confine the meaning of "*parties* to the constitutional compact," to the States in the capacity in which they formed the compact, in exclusion of the State Gov$^{ts.}$ which did not form it. And the use of the term "States" throughout in the *plural* number distinguished between the rights belonging to them in their collective, from those belonging to them in their individual capacities.

With respect to the terms following the term "unconstitutional"—viz. "not law, but null void and of no force or effect" which were stricken out of the 7$^{th.}$ Resol$^{n.}$ my memory cannot positively decide whether they were or were not in the original draft, and no copy of it appears to have been retained.[2]

[1] "That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the states [alone] are parties," &c. *Ante*, Vol. VI., p. 326.

[2] *Ibid.*, p. 331.

On the presumption that they were in the draft as it went from me, I am confident that they must have been regarded only as giving accumulated emphasis to the *declaration*, that the alien & sedition acts had in the opinion of the Assembly violated the Constitution of the U. S. and not that the addition of them could annul the acts or sanction a resistance of them. The Resolution was expressly *declaratory*, and proceeding from the Legislature only which was not even a party to the Constitution, could be declaratory of opinion only.

It may not be out of place here to remark that if the insertion of those terms in the draft could have the effect of showing an inconsistency in its author; the striking them out w^d. be a protest ag^st. the doctrine which has claimed the authority of Virginia in its support.

If the 3^d. Resolution be in any degree open to misconstruction on this point, the language and scope of the 7^th ought to controul it; and if a more explicit guard against misconstruction was not provided, it is explained in this as in other cases of omission, by the entire absence of apprehension that it could be necessary. Who could, at that day, have foreseen some of the comments on the Constitution advanced at the present?

The task you have in hand is an interesting one, the more so as there is certainly room for a more precise & regular history of the Articles of Confederation & of the Constitution of the U. S. than has yet appeared. I am not acquainted with Pitkin's

work, and it was not within the scope of Marshall's Life of Washington to introduce more of Constitutional History than was involved in his main subject. The Journals of the State Legislatures, with the Journal & debates of the State Conventions, and the Journal and other printed accounts of the proceedings of the federal Convention of 1787, are of course the primary sources of information. Some sketches of what passed in that Convention have found their way to the public, particularly those of Judge Yates and of M^r. Luther Martin. But the Judge tho' a highly respectable man, was a zealous partizan, and has committed gross errors in his desultory notes. He left the Convention also before it had reached the stages of its deliberations in which the character of the body and the views of individuals were sufficiently developed. M^r. Martin who was also present but a part of the time betrays, in his communication to the Legislature of Maryland, feelings which had a discolouring effect on his statements. As it has become known that I was at much pains to preserve an account of what passed in the Convention, I ought perhaps to observe, that I have thought it becoming in several views that a publication of it should be at least of a posthumous date.

I know not that I could refer you to any other appropriate sources of information w^ch. will not have occurred to you, or not fall within your obvious researches. The period which your plan embraces abounds with materials in pamphlets & in newspaper essays not published in that form. You would

doubtless find it worth while to turn your attention to the Collections of the Historical Societies now in print in some of the States. The library of Phil[a]. is probably rich in pertinent materials. Its catalogue alone might point to such as are otherwise attainable. Although I might with little risk leave it to your own inference, I take the liberty of noting that this hasty compliance with your request is not for the public eye; adding only my sincere wishes for the success of the undertaking which led to it, and the offer of my friendly respects & salutations.

TO JARED SPARKS.[1] MAD. MSS.

MONTPELLIER, April 8, 1831.

DEAR SIR,—I have duly received your letter of March 30. In answer to your enquiries "respecting the part acted by Gouverneur Morris (whose life, you observe, you are writing) in the Federal Convention of 1787, and the political doctrines maintained by him," it may be justly said that he was an able, an eloquent, and an active member, and shared largely in the discussions succeeding the 1st of July, previous to which, with the exception of a few of the early days, he was absent.

Whether he accorded precisely "with the political doctrines of Hamilton" I cannot say. He certainly did not "incline to the Democratic side," and was very frank in avowing his opinions when most at variance with those prevailing in the Convention.

[1] From the *Works of Madison* (Cong. Ed.).

He did not propose any outline of a Constitution, as was done by Hamilton; but he contended for certain articles, (a Senate for life, particularly,) which he held essential to the stability and energy of a Government capable of protecting the rights of property against the spirit of Democracy. He wished to make the weight of wealth to balance that of numbers, which he pronounced to be the only effectual security to each against the encroachments of the other.

The *finish* given to the style and arrangement of the Constitution fairly belongs to the pen of Mr. Morris; the task having been probably handed over to him by the Chairman of the Committee, himself a highly respectable member, with the ready concurrence of the others. A better choice could not have been made, as the performance of the task proved. It is true that the state of the materials, consisting of a reported draught in detail, and subsequent resolutions accurately penned, and falling easily in their proper places, was a good preparation for the symmetry and phraseology of the instrument; but there was sufficient room for the talents and taste stamped by the author on the face of it. The alterations made by the Committee are not recollected. They were not such as to impair the merit of the composition. Those, verbal and others, made in the Convention, may be gathered from the Journal, and will be found also [to leave] that merit altogether unimpaired.

The anecdote you mention may not be without a foundation, but not in the extent supposed. It is

certain that the return of Mr. Morris to the Convention was at a critical stage of its proceedings. The knot felt as the Gordian one was the question between the larger and smaller States on the rule of voting in the Senatorial branch of the Legislature; the latter claiming, the former opposing, the rule of equality. Great zeal and pertinacity had been shewn on both sides; and an equal division of the votes on the question had been reiterated and prolonged till it had become not only distressing but seriously alarming. It was during that period of gloom that Dr. Franklin made the proposition for a religious service in the Convention, an account of which was so erroneously given, with every semblance of authenticity, through the National Intelligencer, several years ago. The crisis was not over when Mr. Morris is said to have had an interview and conversation with General Washington and Mr. R. Morris, such as may well have occurred; but it appears that on the day of his re-entering the Convention a proposition had been made from another quarter to refer the knotty question to a committee with a view to some compromise; the indications being manifest that sundry members from the larger States were relaxing in their opposition, and that some ground of compromise was contemplated, such as finally took place, and as may be seen in the printed Journal. Mr. Morris was in the deputation from the large State of Pennsylvania, and combated the compromise throughout. The tradition is, however, correct that on the day of his resuming his seat he entered with

anxious feelings into the debate, and in one of his speeches painted the consequences of an abortive result to the Convention in all the deep colours suited to the occasion. But it is not believed that any material influence on the turn which things took could be ascribed to his efforts; for, besides the mingling with them some of his most disrelished ideas, the topics of his eloquent appeals to the members had been exhausted during his absence, and their minds were too much made up to be susceptible of new impressions.

It is but due to M^r. Morris to remark, that to the brilliancy and fertility of his genius he added, what is too rare, a candid surrender of his opinions when the lights of discussion satisfied him that they had been too hastily formed, and a readiness to aid in making the best of measures in which he had been overruled.

In making this hastened communication, I have more confidence in the discretion with which it will be used, than in its fulfilment of your anticipations. I hope it will at least be accepted as a proof of my respect for your object, and of the sincerity with which I tender you a reassurance of the cordial esteem and good wishes in which Mrs. Madison always joins me.

I take for granted you have at command all the printed works of Mr. Morris. I recollect that there can be found among my pamphlets a small one by him, intended to prevent the threatened repeal

of the law of Pennsylvania which had been passed as necessary to support the Bank of N. America, and when the repeal was viewed as a formidable blow to the establishment. Should a copy be needed, I will hunt it up and forward it.

TO J. K. PAULDING. MAD. MSS.

MONTP$^{R.}$, Ap^{l}—, 1831.

DEAR SIR I have rec^{d} your letter of the 6th inst; and feel myself very safe in joining your other friends in their advice on the Biographical undertaking you meditate. The plan you adopt is a valuable improvement on the prevailing examples, which have too much usurped the functions of the historian; and by omitting the private features of character, and anecdotes, which as condiments, always add flavour, and sometimes nutrition to the repast, have forfeited much of the due attraction. The more historical mode has been recommended, probably by the more ready command of materials, such as abound in the contributions of the Press, & in the public archives. In a task properly biographical, the difficulty lies in the evanescent or inaccessible information which it particularly requires. Autographic memorials are rare, and usually deficient on essential points, if not otherwise faulty; and at the late periods of life the most knowing witnesses may have descended to the tomb, or their memories become no longer faithful depositories. Where oral tradition is the resort, all know the uncertainties, and inaccuracies which beset it.

I ought certainly to be flattered by finding my name on the list of subjects you have selected; and particularly so, as I can say with perfect sincerity, there is no one, to whose justice, judgment, and every other requisite, I could more willingly confide, whatever of posthumous pretension, my career thro' an eventful period, may have, to a conservative notice. Yet I feel the awkwardness of attempting "a sketch of the

principal incidents of my life," such as the partiality of your friendship has prompted you to request. Towards a compliance with your object I may avail myself of a paper, tho' too meagre even for the name of a sketch, w^ch^ was very reluctantly but unavoidably drawn up a few years ago for an absortive biography. Whether I shall be able to give it any amplification, is too uncertain to admit a promise.[1] My life has been so much of a public one, that any review of it must mainly consist, of the agency which was my lot in public transactions; and of that agency the portions probably the most acceptable to general curiosity, are to be found in my manuscript preservations of some of those transactions, and in the epistolary communications to confidential friends made at the time & on the spot, whilst I was a member of Political Bodies, General or Local. My judgment has accorded with my inclination that any publicity, of which selections from this miscellany may be thought worthy, should await a posthumous date. The printed effusions of my pen are either known or of but little bulk.

For portraits of the several characters you allude to, I know not that I can furnish your canvas with any important materials not equally within your reach, as I am sure that you do not need if I could supply any aid to your pencil in the use of them. Everything relating to Washington is already known to the world, or will soon be made known thro' Mr. Sparks; with the exception of some of those inside views of character and scenes of domestic life which are apart from ordinary opportunities of observation. And it may be presumed that interesting lights will be let in even on those exceptions through the private correspondences in the hands of Mr. Sparks.

Of Franklin I had no personal knowledge till we served together in the Federal Convention of 1787, and the part he took there has found its way to the public, with the exception

[1] The paper to which he refers he probably destroyed. It is not among his MSS.

of a few anecdotes which belong to the unveiled part of the proceedings of that Assembly. He has written his own life, and no man had a finer one to write, or a better title to be himself the writer. There is eno' of blank however for a succeeding pen.

With Mr. Jefferson I was not acquainted till we met as members of the first Revolutionary Legislature of Virginia, in 1776. I had of course no personal knowledge of his early life. Of his public career, the records of his Country give ample information and of the general features of his character with much of his private habits, and of his peculiar opinions, his writings before the world to which additions are not improbable, are equally explanatory. The obituary Eulogiums, multiplied by the Epoch & other coincidences of his death, are a field where some things not unworthy of notice may perhaps be gleaned. It may on the whole be truly said of him, that he was greatly eminent for the comprehensiveness & fertility of his genius, for the vast extent & rich variety of his acquirements; and particularly distinguished by the philosophic impress left on every subject which he touched. Nor was he less distinguished for an early & uniform devotion to the cause of liberty, and systematic preference of a form of Gov^{t} squared in the strictest degree to the equal rights of man. In the social & domestic spheres, he was a model of the virtues & manners which most adorn them.

In relation to Mr. John Adams, I had no personal knowledge of him, till he became V. President of the U. S. and then saw no side of his private character which was not visible to all; whilst my chief knowledge of his public Character & career was acquired by means now accessible, or becoming so to all. His private papers are said to be voluminous; and when opened to public view, will doubtless be of much avail to a biographer. His official correspondence during the Revolutionary period, just published will be found interesting both in a historical & biographical view. That he had a mind rich in ideas of his own, as well as its learned store; with an ardent

love of Country, and the merit of being a colossal champion of its Independence, must be allowed by those most offended by the alloy in his Republicanism, and the fervors and flights originating in his moral temperament.

Of Mr. Hamilton, I ought perhaps to speak with some restraint, though my feelings assure me, that no recollection of political collisions, could control the justice due to his memory. That he possessed intellectual powers of the first order, and the moral qualifications of integrity & honor in a captivating degree, has been decreed to him by a suffrage now universal. If his Theory of Gov^{t} deviated from the Republican Standard, he had the candor to avow it, and the greater merit of co-operating faithfully in maturing & supporting a system which was not his choice. The criticism to which his share in the administration of it, was most liable was, that it had the aspect of an effort to give to the instrument a constructive & practical bearing not warranted by its true & intended character. It is said that his private files have been opened to a friend who is charged with the task you contemplate. If he be not a Citizen of N. York, it is probable that in collecting private materials from other sources your opportunities may be more than equal to his.

I will, on this occasion take the liberty to correct a statement of Mr. H. which contradicts mine on the same subject; and which as mine, if erroneous could not be ascribed to a lapse of memory, might otherwise be an impeachment of my veracity. I allude to the discrepancy between the memorandum given by Mr. H. to Mr. Benson, distributing the No^{s} of the "Federalist" to the respective writers, and the distribution communicated by me at an early day to a particular friend, & finally to Mr. Gideon for his Edition of the Work at Washington a few years ago.[1]

The reality of errors in the statement of Mr. H. appears from an internal evidence in some of the papers. Take

[1] See *ante*, Vol. VIII., 408 *et seq.;* also *The Authorship of the Federalist*, by Edward Gaylord Bourne, *Am. Hist. Rev.*, ii., 443.

for an example N^{o} 49, which contains a Eulogy on Mr. Jn, marking more of the warm feelings of personal friendship in the writer, than at any time belonged to Mr. Hamilton. But there is proof of another sort in N^{o} 64, ascribed in the memorandum to Mr. H. That it was written by Mr. Jay, is shewn by a passage in his Life by Delaplaine, obviously derived directly or indirectly from Mr. Jay himself. There is a like proof that N. 54, ascribed to Mr. Jay, was not written by him. Nor is it difficult to account for errors in the memorandum, if recurrence be had to the moment at which a promise of such a one was fulfilled; to the lumping manner in which it was made out; and to the period of time, not less than years, between the date of the "Federalist," and that of the memorandum; And as a proof of the fallibility to which the memory of Mr. H. was occasionally subject, a case may be referred to so decisive as to dispense with every other. In the year [1803] Mr. H., in a letter answering an inquiry of Col. Pickering concerning the plan of Gov^{t} which he had espoused in the Convention of 1787, states that at the close of the Convention he put into my hands a draught of a Constitution; and in that draught he had proposed a "President for three years." [See the letter in Niles's Register.[1]] Now the fact is that in that plan, the original of which I ascertained several years ago to be among his papers, *the tenure of office* for the President is not 3 *years, but during good behaviour*. The error is the more remarkable, as the letter apologizes, according to my recollection, for its being not a prompt one; and as it is so much at variance with the known cast of Mr. H's political tenets, that it must have astonished his political & most of all his intimate friends. I sh^{d} do injustice nevertheless to myself as well as to Mr. H. if I did not express my perfect confidence that the misstatement was involuntary, and that he was incapable of any that was not so.

I am sorry sir that I could not make a better contribution

[1] The letter is in *The Works of Hamilton* (Lodge), Federal Edition, x., 446.

to your fund of biographical matter. Accept it as an evidence at least of my respect for your wishes; & with it the cordial remembrances & regards in which Mrs. M. joins me as I do her in the request to be favorably presented to Mrs. Paulding.

Much curiosity & some comment have been excited by the marvellous [similarity] in a Plan of Gov^{t} proposed by Ch^{s} Pinckney in the Conv^{n} of 1787, as published in the Journals with the text of the Constitution as finally agreed to. I find among my pamphlets a copy of a small one entitled "Observations on the Plan of Gov^{t} submitted to the Fed^{l} Convention in Phil^{a} on the 28th of May by Mr. C. P. a Delegate from S. C. delivered at different times in the Convention."

My Copy is so defaced & mutilated that it is impossible to make out eno' of the Plan as referred to in the Observation, for a due comparison of it, with that presented in the Journal. The pamphlet was printed in N. Y. by Francis Childs. The year is effaced: It must have been not very long after the close of the Convention, and with the sanction at least of Mr. P. himself. It has occurred that a copy may be attainable at the Printing office if still kept up, or examined in some of the Libraries, or Historical Collections in the City. When you can snatch a moment in y. walks with other views; for a call at such places, you will promote an object of some little interest as well as delicacy, by ascertaining whether the article in question can he met with. I have among my manuscript papers, Lights on the subject. The pamphlet of Mr. P. could not fail to add to them.

Apl. 1831.[1]

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[1] This appears to have been drafted by Madison as a postscript to his letter to Paulding, but it may have been sent separately. On June 6, 1831, he wrote Paulding again:

"Since my letter answering yours of Ap^{l} 6 in which I requested you to make an inquiry concerning a small pamphlet of Charles Pinckney, printed at the close of the Fed^{l} Convention of 1787, it has

TO JAMES MONROE. MONROE MSS.

MONTPELLIER, April 21, 1831.

DEAR SIR,—I have duly rec[d] yours of [April 11.][1] I considered the advertisement of your estate in Loudon as an omen that your friends in Virginia were to lose you. It is impossible to gainsay the motives to which you yielded in making N. Y. your residence, tho' I fear you will find its climate unsuited to your period of life and the state of your health. I just observe and with much pleasure, that the sum voted by Congress, however short of just calculations, escapes

occurred to me that the pamphlet might not have been put in circulation, but only presented to his friends &c. In that way I may have become possessed of the copy to which I referred as in a damaged state. On this supposition the only chance of success must be among the Books &c. of individuals on the list of Mr. Pinckney's political associates & personal friends. Of those who belonged to N. Y. I recollect no one so likely to have rec[d] a copy as Rufus King. If that was the case, it may remain with his Representative, and I would suggest an informal resort to that quarter with a hope that you will pardon this further tax on your kindness."—*Mad. MSS.*

And on June 27:

"With your favor of the 20th inst. I rec[d] the Vol of pamphlets containing that of Mr. Ch[s] Pinckney, for which I am indebted to your obliging researches. The vol. shall be duly returned & in the mean time duly taken care of. I have not sufficiently examined the pamphlet in question, but have no doubt that it throws light on the object to which it has relation.

"I had previously rec[d] yours of the 13th, and must remark that you have not rightly seized the scope of what was said in mine of April —I did not mean that I had in view a *History* of any sort, public or personal; but only a preservation of materials, of which I happened to be a Recorder, or to be found in my voluminous correspondences with official associates or confidential friends. By the first I alluded particularly to the proceedings & debates of the latter periods of the Revolutionary Congress & of the Federal Convention in 1787; of which in both cases, I had as a member an opportunity of taking an account." —*Mad. MSS.*

[1] Monroe's letter is in the *Writings of Monroe* (Hamilton), vii., 231. He died July 4.

the loppings to which it was exposed from the accounting process at Washington, and that you are so far relieved from the vexations involved in it. The result will I hope spare you at least the sacrifice of an untimely sale of your valuable property; and I would fain flatter myself, that with an encouraging improvement of your health you might be brought to reconsider the arrangement which fixes you elsewhere. The effect of this in closing the prospect of our ever meeting again afflicts me deeply, certainly not less so, than it can you. The pain I feel at the idea, associated as it is with a recollection of the long, close, and uninterrupted friendship which united us, amounts to a pang which I cannot well express, and which makes me seek for an alleviation in the possibility that you may be brought back to us in the wonted degree of intercourse. This is a happiness my feelings covet, notwithstanding the short period I could expect to enjoy it; being now, tho' in comfortable health, a decad beyond the canonical three score & ten, an epoch which you have but just passed. As you propose to make a visit to Loudon previous to the notified sale, if the state of your health permit; why not, with the like permission, extend the trip to this quarter. The journey, at a rate of your own choice, might co-operate in the re-establishment of your health, whilst it would be a peculiar gratification to your friends, and perhaps enable you to join your colleagues at the University, once more at least. It is much to be desired that you should continue as long as possible a member of the Board, and I hope you will not send in your resignation in case you find your cough and weakness giving way to the influence of the season, & the innate strength of your Constitution. I will not despair of your being able to keep up your connexion with Virginia by retaining Oak hill and making it not less than an occasional residence. Whatever may be the turn of things, be assured of the unchangeable interest felt by Mrs. M. as well as myself, in your welfare, and in that of all who are dearest to you.

In explanation of my microscopic writing, I must remark

that the older I grow the more my stiffening fingers make smaller letters, as my feet take shorter steps; the progress in both cases being at the same time more fatiguing as well as more slow.

TO JARED SPARKS. MAD. MSS.

June 1. 1831.

Dear Sir,—I have duly rec^{d} yours of 24th Ult, and inclose the little pamphlet by Gov^{r} Morris which it refers to. Unless it is to be printed entire in the vol^{s} you are preparing, I sh^{d} wish to replace it in the collection from which it is taken. Of the other unofficial writings by him, I have but the single recollection that he was a writer for the Newspapers in 1780 (being then a member of Cong^{s}) on our public affairs, chiefly I believe, on the currency & resources of the U. S. It was about the time that the scale of 1 for 40, was applied to the 200,000,000 of dol^{rs} which had been emitted; and his publications were probably occasioned by the crisis, but of the precise scope of them, I cannot speak. I became a member of Cong^{r} in March of that year, just after the fate of the old Emissions had been decided on; and the subject so far deprived of its interest. In the Phil^{a} newspapers of that period, the writings in question might probably be found, and verified by the style if not the name of the Author. Whether Mr. M. wrote a pamphlet about Deane is a point on w^{ch} I can give no answer.

May I ask of you to let me know the result of your

correspondence with Charleston on the subject of Mr. Pinckney's draft of a Const[n] for the U. S. as soon as it is ascertained.

It is quite certain that since the death of Col. Few I have been the only living signer of the Const[n] of the U. S. Of the members who were present & did not sign, & of those who were present part of the time, but had left the Convention, it is equally certain, that not one has remained since the death of Mr. Lansing who disappeared so mysteriously not very long ago. I happen also to be the sole survivor of those who were members of the Revol[y] Cong[s] prior to the close of the war; as I had been for some years, of the members of the Convention in 1776 which formed the first Const[n] for Virg[a] Having outlived so many of my cotemporaries, I ought not to forget that I may be thought to have outlived myself.

With cord[l] esteem & all good wishes.

I had not known that the papers of Mr. Hamilton had passed into the hands of Mr. Bayless. Col. Pickering was the last reported selection for the trust.

TO TENCH RINGGOLD. MAD. MSS.

MONTPELLIER, July 12, 1831.

D[R] SIR,—I rec[d] in the due times your two favors of July 7, & 8,[1] the first giving the earliest, the

[1] Madison wrote the dates of Ringgold's letters incorrectly. The first was dated July 4, "Monday afternoon 50 minutes past 4 o'clock," and informed Madison of Monroe's death "exactly at half-past 3 o'clock

last the fullest account that reached me of the death of our excellent friend; and I cannot acknowledge these communications, without adding the thanks which I owe in common with those to whom he was most dear, for the devoted kindness on your part, during the lingering illness which he could not survive.

I need not say to you who so well know, how highly I rated the comprehensiveness & character of his mind; the purity & nobleness of his principles; the importance of his patriotic services; and the many private virtues of which his whole life was a model, nor how deeply therefore I must sympathize, on his loss, with those who feel it most. A close friendship, continued thro' so long a period & such diversified scenes, had grown into an affection very imperfectly expressed by that term; and I value accordingly the manifestation in his last hours that the reciprocity never abated.

I have heard nothing of the state of his affairs, as they descend to those most interested in it, not

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P.M." Alexander Hamilton, Jr., under date New York, June 30, had informed him that Monroe's death was inevitable. He replied to Hamilton July 9:

"The feelings with which the event was rec^{d} by me may be inferred from the long & uninterrupted friendship which united us, and the intimate knowledge I had of his great public merits, and his endearing private virtues. I condole in his loss most deeply with those to whom he was most dear. We may cherish the consolation nevertheless, that his memory, like that of the other heroic worthies of the Revolution gone before him, will be embalmed in the grateful affections of a posterity enjoying the blessings which he contributed to procure for it.

"With my thanks for the kind attention manifested by your letter, I pray you to accept assurances of my friendly esteem, and my good wishes."—*Mad. MSS.*

even as to the result of the advertisement relating to his property in Loudon. I have indulged a hope, but it is too much mingled with my wishes to be relied on, that the last act of Cong[s] might produce a surplus of a consoling amount.

I have written not only in haste, but with Rheumatic fingers, a part of the effect of a general attack, which occasions the date from home, instead of the University, where the Board of Visitors is now in Session.

Mrs. M. joins me in the offer of sincere regards & a return of your good wishes.

TO MATTHEW CAREY. MAD. MSS.

MONTPELLIER, July 27, 1831.

DEAR SIR I have rec[d] your favor of the 21st, with your commencing address to the Citizens of S. Carolina. The strange doctrines and misconceptions prevailing in that quarter are much to be deplored; and the tendency of them the more to be dreaded, as they are patronized by Statesmen of shining talents, and patriotic reputations. To trace the great causes of this state of things out of which these unhappy aberrations have sprung, in the effect of markets glutted with the products of the land, and with the land itself; to appeal to the nature of the Constitutional compact, as precluding a right in any one of the parties to renounce it at will, by giving to all an equal right to judge of its obligations; and, as the obligations are mutual, a right to enforce corre-

lative with a right to dissolve them; to make manifest the impossibility as well as injustice, of executing the laws of the Union, particularly the laws of commerce, if even a single State be exempt from their operation; to lay open the effects of a withdrawal of a Single State from the Union on the *practical* conditions & relations of the others; thrown apart by the intervention of a foreign nation; to expose the obvious, inevitable & disastrous consequences of a separation of the States, whether into alien confederacies or individual nations; these are topics which present a task well worthy the best efforts of the best friends of their country, and I hope you will have all the success, which your extensive information and disinterested views merit. If the States cannot live together in harmony, under the auspices of such a Government as exists, and in the midst of blessings, such as have been the fruits of it, what is the prospect threatened by the abolition of a Common Government, with all the rivalships collisions and animosities, inseparable from such an event. The entanglements & conflicts of commercial regulations, especially as affecting the inland and other non-importing States, & a protection of fugitive slaves, substituted for the present obligatory surrender of them, would of themselves quickly kindle the passions which are the forerunners of war.

My health has not been good for several years, and is at present much crippled by Rheumatism; This with my great age warns me to be as little as possible before the public; and to give way to others who with

the same love of their Country, are more able to be useful to it.

TO JARED SPARKS.[1]

MONTPELLIER, November 25, 1831.

DEAR SIR,—I have received your favor of the 14th instant. The simple question is, whether the draught sent by Mr. Pinckney to Mr. Adams, and printed in the Journal of the Convention, could be the same with that presented by him to the Convention on the 29th day of May, 1787; and I regret to say that the evidence that that was not the case is irresistible. Take, as a sufficient example, the important article constituting the House of Representatives, which, in the draught sent to Mr. Adams, besides being too minute in its details to be a possible anticipation of the result of the discussion, &c., of the Convention on that subject, makes the House of Representatives *the choice of the people*. Now, the known opinion of Mr. Pinckney was, that that branch of Congress ought to be chosen by the *State Legislatures*, and not immediately by the people. Accordingly, on the 6th day of June, not many days after presenting his draught, Mr. Pinckney, agreeably to previous notice, moved that, as an amendment to the Resolution of Mr. Randolph, the term "people" should be struck out and the word "Legislatures" inserted; so as to read, "Resolved, That the members of the first branch of the National Legislature ought

[1] From the *Works of Madison* (Cong. Ed.).

to be elected by the Legislatures of the several States." But what decides the point is the following extract from him to me, dated March 28, 1789:

"Are you not, to use a full expression, abundantly convinced that the theoretic nonsense of an election of the members of Congress by the people, in the first instance, is clearly and practically wrong; that it will, in the end, be the means of bringing our Councils into contempt, and that the Legislatures are the only proper judges of who ought to be elected?" [1]

[1] CHARLESTON, March 28: 1789.

. . . I shall begin by saying what I am sure you will believe, that I am much pleased to find you in the federal Legislature.—I did expect you would have been in the Senate & think your State was blind to it's interests in not placing you there, but where you are may in the event prove the most important situation—for as most of the acts which are to affect the Revenue of the Union must originate with your house, and as they are the most numerous body, a greater scope will be afforded for the display of legislative talents than in the other branch, whose radical defect is the smallness of their numbers & whose doors must be always shut during their most interesting deliberations.

It will be some time perhaps before I hear of you, but when you write, answer me candidly as I am sure you will the following Queries, without suffering any little disappointment to yourself to warp your opinion.

Are you not, to use a full expression, abundantly convinced that the theoretical nonsense of an election of the members of Congress by the people in the first instance, is clearly and practically wrong.—that it will in the end be the means of bringing our councils into contempt and that the legislature are the only proper judges of who ought to be elected?

Are you not fully convinced that the Senate ought at least to be double their number to make them of consequence & to prevent their falling into the same comparative state of insignificance that the State Senates have, merely from their smallness?

Do you not suppose that giving to the federal Judicial *retrospective jurisdiction in any case whatever*, from the difficulty of determining to what periods to look back from its being an ex post facto provision,

Other proofs against the identity of the two draughts may be found in Article VIII of the Draught, which, whilst it specifies the functions of the President, contains no provision for the election of any such officer, nor, indeed, for the appointment of any Executive Magistracy, notwithstanding the evident purpose of the author to provide an *entire* plan of a Federal Government.

Again, in several instances where the Draught corresponds with the Constitution, it is at variance with the ideas of Mr. Pinckney, as decidedly expressed in his votes on the Journal of the Convention. Thus, in Article VIII of the Draught, provision is made for removing the President by impeachment, when it appears that in the Convention, July 20, he was opposed to any impeachability of the Executive Magistrate. In Article III, it is required that all money-bills shall originate in the first branch of the Legislature; and yet he voted, on the 8th August, for striking out that provision in the Draught reported

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& from the confusion & opposition it will give rise to, will be the surest & speediest mode to subvert our present system & give its adversaries the majority?

Do not suffer these and other queries I may hereafter put to you to startle your opinion with respect to my principles.—I am more than ever a friend to the federal constitution,—not I trust from that fondness which men sometimes feel for a performance in which they have been concerned but from a conviction of its intrinsic worth—from a conviction that on its efficacy our political welfare depends,—my wish is to see it divested of those improprieties which I am sure will sooner or later subvert, or what is worse bring it into contempt. . . .

PINCKNEY TO MADISON.—*Mad. MSS.*

The omitted portions of the letter relate to private and personal affairs.

by the Committee on the 6th. In Article V, members of each House are made ineligible, as well as incapable, of holding any office under the Union, &c., as was the case at one stage of the Constitution; a disqualification disapproved and opposed by him August 14th.

Further discrepancies might be found in the observations of Mr. Pinckney, printed in a pamphlet by Francis Childs, in New York, shortly after the close of the Convention. I have a copy, too mutilated for use, but it may probably be preserved in some of your historical respositories.

It is probable that in some instances, where the Committee which reported the Draught of Aug^{t} 6th might be supposed to have borrowed from Mr. Pinckney's Draught, they followed details previously settled by the Convention, and ascertainable, perhaps, by the Journal. Still there may have been room for a passing respect for Mr. Pinckney's plan by adopting, in some cases, his arrangement; in others, his language. A certain analogy of outlines may be well accounted for. All who regard the objects of the Convention to be a real and regular Government, as contradistinguished from the old Federal system, looked to a division of it into Legislative, Executive, and Judiciary branches, and of course would accommodate their plans to their organization. This was the view of the subject generallytaken and familiar in conversation, when Mr. Pinckney was preparing his plan. I lodged in the same house with him, and he was fond of conversing on the subject. As you

will have less occasion than you expected to speak of the Convention of 1787, may it not be best to say nothing of this delicate topic relating to Mr. Pinckney, on which you cannot use all the lights that exist and that may be added?

My letter of April 8th was meant merely for your own information and to have its effect on your own view of things. I see nothing in it, however, unfit for the press, unless it be thought that the friends of Mr. Morris will not consider the credit given him a balance for the merit withdrawn, and ascribe the latter to some prejudice on my part.

TO R. R. GURLEY. MAD. MSS.

MONTPELLIER, Decr 28, 1831.

DEAR SIR,—I received in due time your letter of the 21 ultº and with due sensibility to the subject of it. Such, however, has been the effect of a painful Rheumatism on my general condition as well as in disqualifying my fingers for the use of the pen, that I could not do justice "to the principles and measures of the Colonization Society in all the great & various relations they sustain to our own Country & to Africa." If my views of them could have the value which your partiality supposes I may observe in brief that the Society had always my good wishes tho' with hopes of its success less sanguine than were entertained by others found to have been the better judges, and that I feel the greatest pleasure at the progress already made by the Society and the

encouragement to encounter the remaining difficulties afforded by the earlier and greater ones already overcome. Many circumstances at the present moment seem to concur in brightening the prospects of the Society and cherishing the hope that the time will come when the dreadful calamity which has so long afflicted our Country and filled so many with despair, will be gradually removed, & by means consistent with justice, peace, and the general satisfaction; thus giving to our Country the full enjoyment of the blessings of liberty and to the world the full benefit of its great example. I have never considered the main difficulty of the great work as lying in the deficiency of emancipations, but in an inadequacy of asylums for such a growing mass of population, and in the great expence of removing it to its new home. The spirit of private manumission as the laws may permit and the exiles may consent, is increasing and will increase, and there are sufficient indications that the public authorities in slaveholding States are looking forward to interpositions in different forms that must have a powerful effect.

With respect to the new abode for the emigrants all agree that the choice made by the Society is rendered peculiarly appropriate by considerations which need not be repeated, and if other situations should not be found as eligible receptacles for a portion of them, the prospect in Africa seems to be expanding in a highly encouraging degree.

In contemplating the pecuniary resources needed for the removal of such a number to so great a dis-

tance my thoughts & hopes have long been turned to the rich fund presented in the Western lands of the Nation which will soon entirely cease to be under a pledge for another object. The great one in question is truly of a national character and it is known that distinguished patriots not dwelling in slaveholding States have viewed the object in that light and would be willing to let the National domain be a resource in effectuating it.

Should it be remarked that the States tho' all may be interested in relieving our Country from the colored population are not equally so, it is but fair to recollect that the sections most to be benefited are those whose cessions created the fund to be disposed of.

I am aware of the Constitutional obstacle which has presented itself but if the general will be reconciled to an application of the territorial fund to the removal of the colored population, a grant to Congress of the necessary authority could be carried with little delay through the forms of the Constitution.[1]

Sincerely wishing increasing success to the labors of the Society I pray you to be assured of my esteem, & to accept my friendly salutations.

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[1] To E. D. White, a Representative from Louisiana, Madison wrote February 14, 1832, that error had been made "in ascribing to him the opinion that Cong^{s} possesses Constitutional powers to appropriate public funds to aid this redeeming project of colonizing the Coloured people." He wished the powers of Congress to be enlarged on this subject.—*Mad. MSS.*

TO N. P. TRIST. MAD. MSS.

December, 1831.

. . . . . .

Other, and some not very candid attempts, are made to stamp my political career with discrediting inconsistencies. One of these is a charge that I have on some occasions, represented the supreme Court of the U. S. as the judge in the last Resort, on the boundary of jurisdiction between the several States & the U. S. and on other occasions have assigned this last resort to the parties to the Constitution. It is the more extraordinary that such a charge should have been hazarded; since besides the obvious explanation, that the last resort means in one case, the last within the purview & forms of the Constitution; and in the other, the last resort of all, from the Constitution itself, to the parties who made it, the distinction is presented & dwelt on both in the report on the Virg[a] Resolutions and in the letter to Mr. Everett, the very documents appealed to in proof of the inconsistency. The distinction between these ultimate resorts is in fact the same, within the several States. The *Judiciary there* may in the course of its functions be the last resort within the provisions & forms of the Constitution; and the people, the parties to the Constitution, the last in cases ultra-constitutional, and therefore requiring their interposition.

It will not escape notice that the Judicial authority of the U. S. when overruling that of a State, is complained of as subjecting a Sovereign State, with all its rights & duties, to the will of a Court composed of not more than seven individuals. This is far from a true state of the case. The question w[d] be between a single State, and the authority of a tribunal representing as many States as compose the Union.

Another circumstance to be noted is that the Nullifiers in stating their doctrine omit the particular form in which it is to be carried into execution; thereby confounding it with the extreme cases of oppression which justify a resort to the original right of resistance, a right belonging to every

community, under every form of Government, consolidated as well as Federal. To view the doctrine in its true character, it must be recollected that it asserts, a right in a single State, to stop the execution of a Federal law, altho' in effect stopping the law everywhere, until a Convention of the States could be brought about by a process requiring an uncertain time; and finally in the Convention when formed a vote of 7 States, if in favor of the veto, to give it a prevalence over the vast majority of 17 States. For this preposterous & anarchical pretension there is not a shadow of countenance in the Constit.ⁿ and well that there is not; for it is certain that with such a deadly poison in it, no Const.ⁿ could be sure of lasting a year; there having scarcely been a year, since ours was formed, without a discontent in some one or other of the States which might have availed itself of the nullifying prerogative. Yet this has boldly sought a sanction under the name of Mr. Jefferson, because, in his letter to Majr Cartwright, he held out a Convention of the States, as, with us, a peaceable remedy in cases to be decided in Europe by intestine wars. Who can believe that Mr. J. referred to a Convention summoned at the pleasure of a single State, with an interregnum during its deliberations; and, above all with a rule of decision subjecting nearly $\frac{3}{4}$ to $\frac{1}{4}$. No man's creed was more opposed to such an inversion of the Repub.ⁿ order of things.

There can be no objection to the reference made to the weakening effect of age on the judgment, in accounting for changes of opinion. But inconsistency at least may be charged on those who lay such stress on the effect of age in one case, and place such peculiar confidence, where that ground of distrust would be so much stronger. What was the comparative age of Mr. Jefferson, when he wrote the letter to Mr. Giles, a few months before his death; in which his language, tho' admitting a construction not irreconcilable with his former opinions is held, in its assumed meaning, to outweigh on the tariff question, opinions deliberately formed in the vigour of life, reiterated in official reasonings & reports; and deriving

the most cogent sanction from his Presidential Messages, and private correspondences. What again the age of Gen[l] Sumter, at which the concurrence of his opinion is so triumphantly hailed? That his judgment may be as sound as his services have been splendid, may be admitted; but had his opinion been the reverse of what it proved to be, the question is justified by the distrust of opinions, at an age very far short of his, whether his venerable years would have escaped a different use of them.

But I find that by a sweeping charge, my inconsistency is extended "to my opinions on almost every important question which has divided the public into parties." In supporting this charge, an appeal is made to "Yates's Secret Debates in the Federal Convention of 1787," as proving that I originally entertained opinions adverse to the rights of the States; and to the writings of Col. Taylor, of Caroline; as proving that I was in that Convention "an advocate for a *Consolidated national Government*."

Of the Debates, it is certain that they abound in errors, some of them very material in relation to myself. Of the passages quoted, it may be remarked that they do not warrant the inference drawn from them. They import "that I was disposed to give Congress a power to repeal State laws," and "that the States ought to be *placed under the controul of the Gen[l] G[t]* at least as much as they were formerly when under the British King & Parliament."

The obvious necessity of a controul on the laws of the States, so far as they might violate the Const[n] & laws of the U. S. left no option but as to the mode. The modes presenting themselves were 1. A Veto on the passage of the State Laws. 2. A Congressional repeal of them. 3. A Judicial annulment of them. The first tho' extensively favored at the outset, was found on discussion, liable to insuperable objections arising from the extent of Country and the multiplicity of State laws. The second was not free from such as gave a preference to the *third* as now provided by the Constitution. The

opinion that the States ought to be placed not less under the Govt. of the U. S. than they were under that of G. B., can provoke no censure from those who approve the Constitution as it stands with powers exceeding those ever allowed by the colonies to G. B. particularly the vital power of taxation, which is so indefinitely vested in Congs. and to the claim of which by G. B. a bloody war, and final separation was preferred.

The author of the "Secret Debates," tho' highly respectable in his general character, was the representative of the portion of the State of New York, which was strenuously opposed to the object of the Convention, and was himself a zealous partisan. His notes carry on their face proofs that they were taken in a very desultory manner, by which parts of sentences explaining or qualifying other parts, might often escape the ear. He left the Convention also on the 5th of July before it had reached the midway of its Session, and before the opinions of the members were fully developed into their matured & practical shapes. Nor did he conceal the feelings of discontent & disgust which he carried away with him. These considerations may account for errors; some of which are self-condemned. Who can believe that so crude and untenable a statement could have been intentionally made on the floor of the Convention, as "that the *several States* were political Societies, *varying* from the *lowest corporations*, to the *highest sovereigns*," or "that the States had vested *all* the *essential rights* of Government in the *old* Congress."

On recurring to the writings of Col. Taylor [1] it will be seen that he founds his imputation agst myself and Govr Randolph, of favoring a Consolidated National Governmt on the Resolutions introduced into the Convention by the latter in behalf of the Virga Delegates, from a consultation among whom they were the result. The Resolutions imported that a Govt, consisting of a *National* Legislre, Executive & Judiciary,

[1] See "New Views," written *after* the Journal of Conn was printed. —*Madison's Note.*

ought to be substituted for the existing Congs. Assuming for the term *national* a meaning co-extensive with a single Consolidated Govt he filled a number of pages, in deriving from that source a support of his imputation. The whole course of proceedings on those Resolutions ought to have satisfied him that the term *National* as contradistinguished from *Federal*, was not meant to express more than that the powers to be vested in the new Govt were to operate as in a Natl Govt directly on the people, and not as in the old Confedcy on the States only. The extent of the powers to be vested, also tho' expressed in loose terms, evidently had reference to limitations & definitions to be made in the progress of the work, distinguishing it from a plenary & Consolidated Govt

It ought to have occurred that the Govt of the U. S. being a novelty & a compound, had no technical terms or phrases appropriate to it, and that old terms were to be used in new senses, explained by the context or by the facts of the case.

Some exulting inferences have been drawn from the change noted in the Journal of the Convention of the word *national* into "United States." The change may be accounted for by a desire to avoid a misconception of the former, the latter being preferred as a familiar caption. That the change could have no effect on the real character of the Govt was & is obvious; this being necessarily deduced from the actual structure of the Gov. and the quantum of its powers.

The general charge which the zeal of party has brought agst me, "of a change of opinion in almost every important question which has divided parties in this Country," has not a little surprized me. For, altho' far from regarding a change of opinion under the lights of experience and the results of improved reflection as exposed to censure, and still farther from the vanity of supposing myself less in need than others, of that privilege, I had indulged the belief that there were few, if any of my contemporaries thro' the long period & varied services, of my political life, to whom a mutability of opinion on great Constitutional questions was less applicable.

Beginning with the great question growing out of the terms "Common Defence & General Welfare," my early opinion expressed in the Federalist, limiting the Phrase to the specified powers, has been adhered to on every occasion wch has called for a test of it.

As to the power in relation to roads & canals, my opinion, without any previous variance from it, was formally announced in the veto on the bonus bill in 1817, and no proof of a subsequent change has been given.

On the subject of the Tariff for the encouragemt of manufactures, my opinion in favor of its constitutionality has been invariable from the first session of Congs under the new Constn of the U. S. to the explicit & public maintenance of it in my letters to Mr. Cabell in 1828.

It will not be contended that any change has been manifested in my opinion of the unconstitutionality of the alien & Sedition laws.

With respect to the supremacy of the Judicial power on questions occurring in the course of its functions, concerning the boundary of Jurisdiction between the U. S. & individual States, my opinion in favor of it was as the 41 No of the Federalist shews, of the earliest date; and I have never ceased to think that this supremacy was a vital principle of the Constitution as it is a prominent feature in its text. A supremacy of the Constitution & laws of the Union, without a supremacy in the exposition & execution of them, would be as much a mockery as a scabbard put into the hand of a Soldier without a sword in it. I have never been able to see, that without such a view of the subject the Constitution itself could be the supreme law of the land; or that the *uniformity* of the Federal Authority throughout the parties to it could be preserved; or that without this *uniformity*, anarchy & disunion could be prevented.

On the subject of the Bank alone is there a color for the charge of mutability on a Constitutional question. But here the inconsistency is apparent, not real, since the change, was

in conformity to an early & unchanged opinion, that in the case of a Constitution as of a law, a course of authoritative, deliberate, and continued decisions, such as the Bank could plead was an evidence of the Public Judgment, necessarily superseding individual opinions. There has been a fallacy in this case as indeed in others in confounding a question whether precedents could expound a Constitution, with a question whether they could alter a Const. This distinction is too obvious to need elucidation. None will deny that precedents of a certain description fix the interpretation of a law. Yet who will pretend that they can repeal or alter a law?

Another error has been in ascribing to the *intention* of the *Convention* which formed the Constitution, an undue ascendency in expounding it. Apart from the difficulty of verifying that intention it is clear, that if the meaning of the Constitution is to be sought out of itself, it is not in the proceedings of the Body that proposed it, but in those of the State Conventions which gave it all the validity & authority it possesses.

TO HENRY CLAY. MAD. MSS.

Confidential. Mar. 22, 1832

DEAR SIR I have duly rec^{d} yours of the 17th. Altho' you kindly release me from a reply, it may be proper to say, that some of the circumstances to which you refer were not before known to me.

On the great question before Cong^{s} on the decision of w^{ch} so much depends out of Cong^{s} I ought the less to obtrude an opinion as its merits essentially depend on many details which I have never investigated and of which I am an incompetent Judge. I know only that the Tariff in its present amount & form, is a source of deep & extensive discontent, and I fear

that without alleviations separating the more moderate from the more violent opponents, very serious effects are threatened. Of these the most formidable & not the least probable w^d^ be a Southern Convention; the avowed object of some, and the unavowed object of others, whose views are, perhaps, still more to be dreaded. The disastrous consequences of disunion, obvious to all will no doubt be a powerful check, on its partisans; but such a Convention, characterized as it w^d^ be by selected talents, ardent zeal & the confidence of those represented w^d^ not be easily stopped in its career; especially as many of its members, tho' not carrying with them particular aspirations for the honors, &c &c presented to ambition on a new political theatre, would find them germinating in such a hotbed.

To these painful ideas I can only oppose hopes & wishes that notwithstanding, the wide space & warm feelings which divide the parties, some accommodating arrangements may be devised that will prove an immediate anodyne, and involve a lasting remedy to the Tariff discords.

Mrs. M. charges me with her affec^e^ remembrances to Mrs. Clay, to whom I beg to be at the same time respectfully presented, with reassurances to y^r^self, of my high esteem & cordial regards.

TO N. P. TRIST. MAD. MSS.

MONTPELLIER, May —, 1832.

DEAR SIR I have received your letter of the 8th, with the book referred to and dictate the acknowl-

edgement of it to a pen that is near me. I will read the work as soon as I may be able. When that will be I cannot say. I have been confined to my bed many days by a bilious attack. The fever is now leaving me but in a very enfeebled state, and without any abatement of my Rheumatism; which, besides its general effect on my health, still cripples me in my limbs, and especially in my hands & fingers.

I am glad to find you so readily deciding that the charges against Mr. Jefferson can be duly refuted. I doubt not this will be well done. To be so, it will be expedient to review carefully the correspondences of Mr. Jefferson, to recur to the aspects of things at different epochs of the Government, particularly as presented at its outset, in the unrepublican formalities introduced and attempted, not by President Washington but by the vitiated political taste of others taking the lead on the occasion; and again in the proceedings which marked the Vice Presidency of Mr. Jefferson.

Allowances also ought to be made for a habit in Mr. Jefferson as in others of great genius of expressing in strong and round terms, impressions of the moment.

It may be added that a full exhibition of the correspondences of distinguished public men through the varied scenes of a long period, would without a *single exception* not fail to involve delicate personalities and apparent if not real inconsistencies.

I heartily wish that something may be done with the tariff that will be admissible on both sides and

arrest the headlong course in South Carolina. The alternative presented by the dominant party there is so monstrous that it would seem impossible that it should be sustained by any of the most sympathising States; unless there be latent views apart from Constitutional questions, which I hope cannot be of much extent. The wisdom that meets the crisis with the due effect will greatly signalize itself.

The idea that a Constitution which has been so fruitful of blessings, and a Union admitted to be the only guardian of the peace, liberty and happiness of the people of the States comprizing it should be broken up and scattered to the winds without greater than any existing causes is more painful than words can express. It is impossible that this can ever be the deliberate act of the people, if the value of the Union be calculated by the consequences of disunion.

I am much exhausted and can only add an affectionate adieu.

TO N. P. TRIST. MAD. MSS.

MONTPELLIER, May 29, 1832.

MY DEAR SIR, Whilst reflecting in my sick bed a few mornings ago, on the dangers hovering over our Constitution and even the Union itself, a few ideas which, tho' not occurring for the first time had become particularly impressive at the present. I have noted them by the pen of a friend on the enclosed paper, and you will take them for what they are worth. If that be anything, and they happen to accord with your own view of the subject, they

may be suggested where it is most likely they will be well received; but without *naming* or *designating* in any manner, the source of them.

I am still confined to my bed with my malady, my debility, and my age, in triple alliance against me. Any convalescence therefore must be tedious, not to add imperfect.

I have not yet ventured on the perusal of the book you sent me. From passages read to me, I perceive "that the venom of its shafts" are not without "a vigor in the bow."

With all my good wishes.

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29 May, 1832.

(The paper referred to as inclosed in the foregoing letter.)

The main cause of the discords which hover over our Constitution and even the union itself, is the tariff on imports; and the great complaint against the tariff is the inequality of the burthen it imposes on the planting and manufacturing States, the latter bearing a less share of the duties on protected articles than the former. This being the case, it seems reasonable that an equality should be restored as far as may be, by duties on unprotected articles consumed in a greater proportion by the manufacturing States. Let then a selection be made of unprotected articles, and such duties imposed on them as will have that effect. The unprotected article of tea for example, known to be more extensively consumed in the manufacturing than in the planting States, might be regarded, as pro tanto, balancing the disproportionate consumption of the protected article of coarse woolens in the South. As the repeal of the duty on tea and some other articles has been represented by southern politicians as more a relief to the North than to the South it follows, that the North in these particulars, has

for many years paid taxes not proportionately borne by the South.

Justice certainly recommends some equalizing arrangement; and in a compound tariff, itself necessary to produce an equilibrium of the burthen, (a duty on any single article tho uniform in law being ununiform in its operation,) such an arrangement might not be impracticable.

Two objections may perhaps be made first, that it might produce an increase of surplus revenue, which there is an anxiety to avoid. But as a *certain* provision for an *adequate* revenue will always produce a surplus to be disposed of, such an addition, if not altogether avoidable, would admit a like disposition. In any view, the evil could not be so great as that for which it is suggested as a remedy.

The second objection is, that such an adjustment between different sections of the nation might increase the difficulty of a proper adjustment between different descriptions of people, particularly between the richer and the poorer. But here again the question recurs, whether the evil as far as it may be unavoidable, be so great as a continuance of the threatening discords which are the alternative.

It cannot be too much inculcated that in a Government like ours, and, indeed, in all governments, and whether in the case of indirect or direct taxes, it is impossible to do perfect justice in the distribution of burthens and benefits, and that equitable estimates and mutual concessions are necessary to approach it.

TO C. E. HAYNES. MAD. MSS.

MONTPELLIER, August 27, 1832.

. . . . . .

The distinction is obvious between, 1st, Such interpositions on the part of the States against unjustifiable acts of the Federal Government as are within the provisions and forms of the Constitution.

These provisions & forms certainly do not embrace the nullifying process proclaimed in South Carolina which begins with a single State and ends with the ascendency of a minority of States over a majority; of 7 over 17; a federal law, during the process, being arrested within the nullifying State; and, if a revenue law, frustrated thro' all the States; 2 interpositions not within the purview of the Constitution by the States in the sovereign capacity in which they were parties to the constitutional compact. And here it must be kept in mind that in a compact like that of the U. S. as in all other compacts, each of the parties has an equal right to decide whether it has or has not been violated and made void. If one contends that it has, the others have an equal right to insist on the validity and execution of it.

It seems not to have been sufficiently noticed that in the proceedings of Virginia referred to, the *plural* terms *States* was invariably used in reference to their interpositions; nor is this sense affected by the object of maintaining within their respective limits the authorities rights and liberties appertaining to them, which could certainly be best effectuated for each by co-operating interpositions.

It is true that in extreme cases of oppression justifying a resort to original rights, and in which passive obedience & non-resistence cease to be obligatory under any Government, a single State or any part of a State might rightfully cast off the yoke. What would be the condition of the Union, and the other members of it, if a single member could at

will renounce its connexion and erect itself, in the midst of them, into an independent and foreign power; its geographical relations remaining the same, and all the social & political relations, with the others converted into those of aliens and of rivals, not to say enemies, pursuing separate & conflicting interests? Should the seceding State be the only channel of foreign commerce for States having no commercial ports of their own, such as that of Connecticut, N. Jersey, & North Carolina, and now particularly all the inland States, we know what might happen from such a state of things by the effects of it under the old Confederation among States bound as they were in friendly relations by that instrument. This is a view of the subject which merits more developments than it appears to have received.

I have sketched these few ideas more from an unwillingness to decline an answer to your letter than from any particular value that may be attached to them. You will pardon me therefore for requesting that you will regard them as for yourself, & not for publicity, which my very advanced age renders every day more and more to be avoided.

Accept Sir, a renewal of my respects & regard.

CHIC. HIST. SOC. MSS. 1832.

private

TO REV. —— ADAMS

CHARLESTON, S. C.

I rec^{d} in due time the printed copy of your Convention sermon on the relation of Xnity to Civil Gov^{t} with a manuscript request of my opinion on the subject.

There appears to be in the nature of man what insures his belief in an invisible cause of his present existence, and anticipation of his future existence. Hence the propensities & susceptibilities in that case of religion which with a few doubtful or individual exceptions have prevailed throughout the world.

Waiving the rights of Conscience, not included in the surrender implied by the social State, and more or less invaded by all religious Establishments, the simple question to be decided is whether a support of the best & purest religion, the Xn religion itself ought not so far at least as pecuniary means are involved, to be provided for by the Gov^{t} rather than be left to the voluntary provisions of those who profess it. And on this question experience will be an admitted Umpire, the more adequate as the connection between Gov^{ts} & Religion have existed in such various degrees & forms, and now can be compared with examples where connection has been entirely dissolved.

In the Papal System, Government and Religion are in a manner consolidated, & that is found to be the worst of Gov^{ts}.

In most of the Gov^{ts} of the old world, the legal establishment of a particular religion and without or with very little toleration of others makes a part of the Political and Civil organization and there are few of the most enlightened judges who will maintain that the system has been favorable either to Religion or to Gov^{t}.

Until Holland ventured on the experiment of combining a liberal toleration with the establishment of a particular creed, it was taken for granted, that an exclusive & intolerant establishment was essential, and notwithstanding the light thrown on the subject by that experiment, the prevailing opinion in Europe, England not excepted, has been that Religion could not be preserved without the support of Gov^{t} nor Gov^{t} be supported with^{t} an established religion that there must be at least an alliance of some sort between them.

It remained for North America to bring the great & interesting subject to a fair, and finally to a decisive test.

In the Colonial State of the Country, there were four examples, R. I. N. J. Penn[a] and Delaware, & the greater part of N. Y. where there were no religious Establishments; the support of Religion being left to the voluntary associations & contributions of individuals; and certainly the religious condition of those Colonies, will well bear a comparison with that where establishments existed.

As it may be suggested that experiments made in Colonies more or less under the Controul of a foreign Government, had not the full scope necessary to display their tendency, it is fortunate that the appeal can now be made to their effects under a compleat exemption from any such controul.

It is true that the New England States have not discontinued establishments of Religion formed under very peculiar circumstances; but they have by successive relaxations advanced towards the prevailing example; and without any evidence of disadvantage either to Religion or good Government.

And if we turn to the Southern States where there was, previous to the Declaration of independence, a legal provision for the support of Religion; and since that event a surrender of it to a spontaneous support by the people, it may be said that the difference amounts nearly to a contrast in the greater purity & industry of the Pastors and in the greater devotion of their flocks, in the latter period than in the former. In Virginia the contrast is particularly striking, to those whose memories can make the comparison. It will not be denied that causes other than the abolition of the legal establishment of Religion are to be taken into view in account[g] for the change in the Religious character of the community. But the existing character, distinguished as it is by its religious features, and the lapse of time now more than 50 years since the legal support of Religion was withdrawn sufficiently prove that it does not need the support of Gov[t]. and it will scarcely be contended that Government has suffered by the exemption of Religion from its cognizance, or its pecuniary aid.

The apprehension of some seems to be that Religion left entirely to itself may run into extravagances injurious both to Religion and to social order; but besides the question whether the interference of Gov^t *in any form* w^d not be more likely to increase than controul the tendency, it is a safe calculation that in this as in other cases of excessive excitement, Reason will gradually regain its ascendancey. Great excitements are less apt to be permanent than to vibrate to the opposite extreme.

Under another aspect of the subject there may be less danger that Religion, if left to itself, will suffer from a failure of the pecuniary support applicable to it than that an omission of the public authorities to limit the duration of their Charters to Religious Corporations, and the amount of property acquirable by them, may lead to an injurious accumulation of wealth from the lavish donations and bequests prompted by a pious zeal or by an atoning remorse. Some monitory examples have already appeared.

Whilst I thus frankly express my view of the subject presented in your sermon, I must do you the justice to observe that you very ably maintained yours. I must admit moreover that it may not be easy, in every possible case, to trace the line of separation between the rights of religion and the Civil authority with such distinctness as to avoid collisions & doubts on unessential points. The tendency to a usurpation on one side or the other, or to a corrupting coalition or alliance between them, will be best guarded ag^st by an entire abstinance of the Gov^t from interference in any way whatever, beyond the necessity of preserving public order, & protecting each sect ag^st trespasses on its legal rights by others.

I owe you Sir an apology for the delay in complying with the request of my opinion on the subject discussed in your sermon; if not also for the brevity & it may be thought crudeness of the opinion itself. I must rest the apology on my great age now in its 83^d year, with more than the ordinary infirmities, and especially on the effect of a chronic Rheuma-

tism, combined with both, which makes my hand & fingers as averse to the pen as they are awkward in the use of it.

Be pleased to accept Sir a tender of my cordial & respectful salutations.

TO ANDREW STEVENSON[1]

MONTP^{r}. NOV^{r} 20, 1832

MY DEAR SIR

I return you many thanks for the warm cap which came safe to hand a few days ago. It is as comfortable as it may be fashionable, which is more than can be said of all fashions. I rec^{d}. at the same time a duplicate of the excellent pair of gloves as well which M^{rs}. Stevenson, allow me rather to say, my cousin Sally has favored me. Being the work of her own hands they will impart the more warmth to mine. As they are a gift not a Gauntlet, I may express thro' her husband, the heartfelt acknowledgments with which they are accepted. M^{rs}. Madison has also provided well for my feet. I am thus equipt cap-a-pie, for the campaign agst. Boreas, & his allies the Frosts & the snows. But there is another article of covering, which I need most of all & which my best friends can not supply. My bones have lost a sad portion of the flesh which clothed & protected them, and the digestive and nutritive organs which alone can replace it, are too slothful in their functions.

[1] Copy from the original draft kindly contributed by Frederick D. McGuire, Esq., of Washington. Stevenson was Speaker of the House of Representatives from 1827 to 1834.

I congratulate Richmond & my friends there on the departure of the atmospheric scourge which carried so many deaths and still more of terror with it. I join in the prayer that as it was the first it may also be the last visit.

Mrs. Stevenson in her letter to Mrs. Madison mentions that since you left us, you have had a sharp bilious attack, adding for our gratification that you had quite recovered from it. It is very important that you shd. carry a good share of health into the chair at the capitol, we cannot expect that it will be a seat of Roses, whatever our hopes, that it may be without the thorns that distinguished the last season.

Inclosed is a letter from Mrs. M. to Mrs. S. As she speaks for me as I do for her, Mrs. S. & yourself will have at once joint & several assurances of our constant affection and of all our good wishes.

TO N. P. TRIST. MAD. MSS.

MONTPELLIER, Decr 23, 1832.

Dr. SIR I have received yours of the 19th, inclosing some of the South Carolina papers. There are in one of them some interesting views of the doctrine of secession; one that had occurred to me, and which for the first time I have seen in print; namely that if one State can at will withdraw from the others, the others can at will withdraw from her, and turn her, nolentem, volentem, out of the union. Until of late, there is not a State that would have

abhorred such a doctrine more than South Carolina, or more dreaded an application of it to herself. The same may be said of the doctrine of nullification, which she now preaches as the only faith by which the Union can be saved.

I partake of the wonder that the men you name should view secession in the light mentioned. The essential difference between a free Government and Governments not free, is that the former is founded in compact, the parties to which are mutually and equally bound by it. Neither of them therefore can have a greater right to break off from the bargain, than the other or others have to hold them to it. And certainly there is nothing in the Virginia resolutions of —98, adverse to this principle, which is that of common sense and common justice. The fallacy which draws a different conclusion from them lies in confounding a *single* party, with the *parties* to the Constitutional compact of the United States. The latter having made the compact may do what they will with it. The former as one only of the parties, owes fidelity to it, till released by consent, or absolved by an intolerable abuse of the power created. In the Virginia Resolutions and Report the *plural* number, *States*, is in *every* instance used where reference is made to the authority which presided over the Government. As I am now known to have drawn those documents, I may say as I do with a distinct recollection, that the distinction was intentional. It was in fact required by the course of reasoning employed on the occasion.

The Kentucky resolutions being less guarded have been more easily perverted. The pretext for the liberty taken with those of Virginia is the word *respective*, prefixed to the "rights" &c to be secured within the States. Could the abuse of the expression have been foreseen or suspected, the form of it would doubtless have been varied. But what can be more consistent with common sense, than that all having the same rights &c, should unite in contending for the security of them to each.

It is remarkable how closely the nullifiers who make the name of Mr. Jefferson the pedestal for their colossal heresy, shut their eyes and lips, whenever his authority is ever so clearly and emphatically against them. You have noticed what he says in his letters to Monroe & Carrington Pages 43 & 203, vol. 2,[1] with respect to the powers of the old Congress to coerce delinquent States, and his reasons for preferring for the purpose a naval to a military force; and moreover that it was not necessary to find a right to coerce in the Federal Articles, that being inherent in the nature of a compact. It is high time that the claim to secede at will should be put down by the public opinion; and I shall be glad to see the task commenced by one who understands the subject.

I know nothing of what is passing at Richmond, more than what is seen in the newspapers. You were right in your foresight of the effect of the

[1] The reference is to the edition of 1829. See the letters in the *Writings of Jefferson* (P. L. Ford) iv., 265, 423.

passages in the late Proclamation. They have proved a leaven for much fermentation there, and created an alarm against the danger of consolidation, balancing that of disunion. I wish with you the Legislature may not seriously injure itself by assuming the high character of mediator. They will certainly do so if they forget that their real influence will be in the inverse ratio of a boastful interposition of it.

If you can fix, and will name the day of your arrival at Orange Court House, we will have a horse there for you; and if you have more baggage than can be otherwise brought than on wheels, we will send such a vehicle for it. Such is the state of the roads produced by the wagons hurrying flour to market, that it may be impossible to send our carriage which would answer both purposes.

TO JOSEPH C. CABELL. MAD. MSS.

MONTP^{R} Dec. 27 1832. 4 o'c P. M.

DEAR SIR I have this moment only rec^{d}. yours of the 22d.[1] I regret the delay as you wished an

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[1] Cabell wrote from Richmond that the House of Delegates had proposed to print Madison's letter to Everett of August 28, 1831 (see *ante*, p. 383) with the report of 1799 on the Resolutions of the previous year; that in the course of the debate Madison had been accused of inconsistency. Cabell would like to read Madison's letter of June 29, 1821, to Judge Roane and to be permitted to say that Roane had in the month of April preceding written to Madison "for advice & aid upon *the subject* of the letters of Algernon Sydney." Cabell had seen the letters to Roane and had kept copies of them. He wanted a word in the letter of June 29th, 1821, supplied.—*Mad. MSS.* For the letters to Roane see *ante*, p. 65.

earlier answer than you can now have, tho' I shall send this immediately to the P. O. My correspondence with Judge Roane originated in his request that I w^d^ take up the pen on the subject he was discussing or about to discuss. Altho' I concurred much in his views of it, I differed as you will see with regard to the power of the Supreme Court of the U. S. in relation to the State Court. This was in my last letter which being an answer did not require one, and none was rec^d^ My view of the supremacy of the Fed^l^ Court when the Const^n^ was under discussion will be found in the Federalist. Perhaps I may, as c^d^ not be improper, have alluded to Cases (of which all Courts must judge) within the scope of its functions. Mr. Pendleton's opinion that there ought to be an appeal from the *Supreme* Court of a State to the *Supreme Court* of the U. S. contained in his letter to me, was I find avowed in the Convention of V^a^, and so stated by his Nephew latterly in Cong^s^ I send you a copy of Col. J. Taylor's arg^t^ on the Carriage tax: if I understand the beginning Pages he is not only high-toned as to Jud^l^ power, but regards the Fed^l^ Courts as the *paramount* Auth^y^ Is it possible to resist the nullifying inference from the doctrine that makes the State Courts uncontrollable by the Supr. C^t^ of the U. S.?

I cannot lay my hand on my letter to Judge Roane. The word omitted, I presume, is *arg^t^* It is a common Comp^t^ among the French as you know to say you have given all its lustre &c. Will it not suffice for you to say, You had formerly a sight of the letter or

of a Copy of it. Sh^d the fact be denied, meet it as you please.

My letter was not written to A. Everett, but to his brother in Cong^s in answer to one from him. It was his Act in handing it to the Review. As his motives were good, I w^d not wish his feelings to be touched by anything s^d on the occasion. What is s^d in that letter, as to the origin of the Const^n I considered as squaring with the account given in the Fed^list of the mixture of Nat^l & Federal *features* in the Constitution. That view of it was well rec^d at the time by its friends, and I believe has not been controverted by the Rep^n party. A marked & distinctive feature in the Resol^n. of 98 is that the *plural* n° is *invariably* used in them & not the singular, and the *course of the reasoning*, required it.

As to my change of opinion ab^t the Bank, it was in conformity to an unchanged opinion that a certain course of practice required it.

The tariff is unconnected with the reso^s of 98. In the first Cong^s of 89 I sustained & have in every situation since adhered to it. I had flattered myself, in vain it seems, that whatever my political errors may have been, I was as little chargeable with inconsistencies, as any of my fellow laborers thro' so long a period of political life. Please return me Taylor's pamphlet, and the letter also w^ch I observe is not fit to be preserved; and I will if you think it worth while, send a copy. I have written it with sore eyes & at night as well as In much haste. Yours with cordial regards

TO ALEXANDER RIVES.[1]

MONTPELIER, [January, 1833.]
(Confidential.)

I have received the letter signed "A Friend of Union and State Rights," enclosing two Essays under the same signature.

It is not usual to answer communications without the proper names to them. But the ability and the motives disclosed in the essay induce me to say, in compliance with the wish expressed, that I do not consider the proceedings of Virginia in '98–99 as countenancing the doctrine that a State may *at will* secede from its constitutional compact with the other states. A rightful secession requires the consent of the others, or an abuse of the compact absolving the seceding party from the obligation imposed by it.

In order to understand the reasoning on one side of the question, it is necessary to keep in view the precise state of the question and the positions and arguments on the other side. This is particularly necessary in questions arising under our novel and compound system of government. Much error and confusion have grown out of a neglect of this precaution.

The case of the alien and sedition acts was a question between the Government and the constituent body, Virginia making an appeal to the latter against the assumption of power by the former.

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[1] From the *National Intelligencer*, November 24, 1860. December 28, 1832, Charlottesville, Va., "A Friend of Union and State Rights" (Alexander Rives) sent Madison two essays of his defending Madison's views on secession. Madison's reply was addressed to the anonymous correspondent, but on January 7, 1833, Rives acknowledged the letter (Mad. MSS.). In printing Madison's letter the *National Intelligencer* said:

"In 1832 Mr. Alexander Rives, under the signature of 'A Friend of Union and State Rights,' published two communications in the *Virginia* (Charlottesville) *Advocate*. The letter of Mr. Madison was called forth by these articles, and was addressed to the writer of them under his nom-de-plume. It bears no date, but a letter from Mr. Rives in reply to it, in our possession, is dated January 7th, 1833."

The case of a claim in a State to secede from its union with the others is a question among the states themselves as parties to a compact.

In the former case it was asserted against Virginia, that the states had no right to interpose legislative declarations of opinion on a constitutional point; nor a right to interpose at all against a decision of the Supreme Court of the United States, which was to be regarded as a tribunal from which there could be no appeal.

The object of Virginia was to vindicate *legislative* declarations of opinion; to designate the several *constitutional* modes of interposition by the states against abuses of power, and to establish the ultimate authority of the states as *parties to and creatures* of the Constitution to interpose against the decisions of the judicial as well as the other branches of the Government —the authority of the judicial being in no sense *ultimate*, out of the purview and form of the Constitution.

Much use has been made of the term "respective" in the third resolution of Virginia, which asserts the right of the *States*, in cases of sufficient magnitude to interpose "for maintaining within their *respective* limits the authorities, and so forth, appertaining to them;" the term "respective" being construed to mean a constitutional right in *each* State, *separately*, to decide on and resist by force encroachments within its limits. A foresight or apprehension of the misconstruction might easily have guarded against it. But, to say nothing of the distinction between ordinary and extreme cases, it is observable that in this, as in other instances throughout the resolution, the plural number (*States*) is used in referring to them that a concurrence and co-operation of all might well be contemplated in interpositions for effecting the objects within reach; and that the language of the closing resolution corresponds with this view of the third. The course of reasoning in the report on the resolutions requires the distinction between *a State* and *the States*.

It surely does not follow from the fact of the states, or

rather the people embodied in them, having, as parties to the constitutional compact, no tribunal above them, that, in controverted meanings of the compact, a minority of the parties can rightfully decide against the majority, still less that a single party can decide against the rest, and as little that it can at will withdraw itself altogether from its compact with the rest.

The characteristic distinction between free Governments, and Governments not free is that the former are founded on compact, not between the Government and those for whom it acts, but among the parties creating the Government. Each of these being equal, neither can have more right to say that the compact has been violated and dissolved than every other has to deny the fact and to insist on the execution of the bargain. An inference from the doctrine that a single state has a right to secede at will from the rest is that the rest would have an equal right to secede from it; in other words, to turn it, against its will, out of its union with them. Such a doctrine would not, till of late, have been palatable anywhere, and nowhere less so than where it is now most contended for.

A careless view of the subject might find an analogy between state secession and individual expatriation. But the distinction is obvious and essential, even in the latter case, whether regarded as a right impliedly reserved in the original social compact, or as a reasonable indulgence, it is not exempt from certain conditions. It must be used without injustice or injury to the community from which the expatriating party separates himself. Assuredly he could not withdraw his portion of territory from the common domain. In the case of a State seceding from the union, its domain would be dismembered, and other consequences brought on not less obvious than pernicious.

I ought not to omit my regret that in the remarks on Mr. Jefferson and myself the names had not been transposed.

Having many reasons for marking this letter *confidential*, I must request that its publicity may not be permitted in any

mode or through any channel. Among the reasons is the risk of misapprehensions or misconstructions, so common, without more attention and development that I could conveniently bestow on what is said.

With respect

Wishing to be assured that the letter has not miscarried, a single line acknowledging its receipt will be acceptable.

TO THOMAS R. DEW. MAD. MSS.

MONTPELLIER, Feb^{y} 23, 1833

. . . . . .

I am aware of the impracticability of an immediate or early execution of any plan, that combines deportation, with emancipation; and of the inadmissibility of emancipation without deportation. But I have yielded to the expediency of attempting a gradual remedy by providing for the double operation.

If emancipation was the sole object, the extinguishment of slavery, would be easy, cheap & compleat. The purchase by the public of all female children at their birth, leaving them in bondage, till it w^{d} defray the charge of rearing them, would within a limited period be a radical resort.

With the condition of deportation, it has appeared to me, that the great difficulty does not lie either in the expence of emancipation, or in the expence or the means of deportation, but in the attainment 1 of the requisite Asylums, 2, the consent of the individuals to be removed, 3, the labor for the vacuum to be created.

With regard to the expence. 1, much will be saved by voluntary emancipations, increasing under the influence of example, and the prospect of bettering the lot of the slaves. 2, much may be expected in gifts & legacies from the opulent the philanthropic and the conscientious, 3, more still from Legislative grants by the States, of which encouraging examples & indications have already appeared, 4, Nor is there

any room for despair of aid from the indirect or direct proceeds of the public lands held in trust by Congress. With a sufficiency of pecuniary means, the facility of providing a naval transportation of the exiles is shewn by the present amount of our tonnage and the promptitude with which it can be enlarged; by the number of emigrants brought from Europe to N. America within the last year; and by the greater number of slaves, which have been within single years brought from the Coast of Africa across the Atlantic.

In the attainment of adequate Asylums, the difficulty, though it may be considerable, is far from being discouraging. Africa is justly the favorite choice of the patrons of colonization; and the prospect there is flattering, 1, in the territory already acquired, 2 in the extent of Coast yet to be explored and which may be equally convenient, 3, the adjacent interior into which the littoral settlements can be expanded under the auspices of physical affinities between the new comers and the natives, and of the moral superiorities of the former, 4, the great inland Regions now ascertained to be accessible by navigable waters, & opening new fields for colonizing enterprises.

But Africa, tho' the primary, is not the sole asylum within contemplation. An auxiliary one presents itself in the islands adjoining this Continent where the colored population is already dominant, and where the wheel of revolution may from time to time produce the like result.

Nor ought another contingent receptacle for emancipated slaves to be altogether overlooked. It exists within the territory under the controul of the U. S. and is not too distant to be out of reach, whilst sufficiently distant to avoid for an indefinite period, the collisions to be apprehended from the vicinity of people distinguished from each other by physical as well as other characteristics.

The consent of the individuals is another pre-requisite in the plan of removal. At present there is a known repugnance in those already in a state of freedom to leave their native

homes; and among the slaves there is an almost universal preference of their present condition to freedom in a distant & unknown land. But in both classes particularly that of the slaves the prejudices arise from a distrust of the favorable accounts coming to them through white channels. By degrees truth will find its way to them from sources in which they will confide, and their aversion to removal may be overcome as fast as the means of effectuating it shall accrue.

The difficulty of replacing the labour withdrawn by a removal of the slaves, seems to be urged as of itself an insuperable objection to the attempt. The answer to it is, 1, that notwithstanding the emigrations of the whites, there will be an annual and by degrees an increasing surplus of the remaining mass. 2, That there will be an attraction of whites from without, increasing with the demand, and, as the population elsewhere will be yielding a surplus to be attracted, 3 that as the culture of Tobacco declines with the contraction of the space within which it is profitable, & still more from the successful competition in the west, and as the farming system takes place of the planting, a portion of labour can be spared, without impairing the requisite stock, 4 that altho' the process must be slow, be attended with much inconvenience, and be not even certain in its result, is it not preferable to a torpid acquiescence in a perpetuation of slavery, or an extinguishment of it by convulsions more disastrous in their character & consequences than slavery itself.

In my estimate of the experiment instituted by the Colonization Society I may indulge too much my wishes & hopes, to be safe from error. But a partial success will have its value, and an entire failure will leave behind a consciousness of the laudable intentions with which relief from the greatest of our calamities was attempted in the only mode presenting a chance of effecting it.

I hope I shall be pardoned for remarking that in accounting for the depressed condition of Virginia, you seem to allow too little to the existence of slavery; ascribe too much to the tariff

laws, and not to have sufficiently taken into view the effect of the rapid settlement of the W. & S. W. Country.

Previous to the Revolution, when, of these causes, slavery alone was in operation, the face of Virg[a] was in every feature of improvement & prosperity, a contrast to the Colonies where slavery did not exist, or in a degree only, not worthy of notice. Again, during the period of the tariff laws prior to the latter state of them, the pressure was little if at all, regarded as a source of the general suffering. And whatever may be the degree in which the extravagant augmentation of the tariff may have contributed to the depression the extent of this cannot be explained by the extent of the cause. The great & adequate cause of the evil is the cause last mentioned; if that be indeed an evil which improves the condition of our migrating citizens & adds more to the growth & prosperity of the whole than it subtracts from a part of the community.

Nothing is more certain than that the actual and prospective depression of Virginia, is to be referred to the fall in the value of her landed property, and in that of the staple products of the land. And it is not less certain that the fall in both cases, is the inevitable effect of the redundancy in the market both of land and of its products. The vast amount of fertile land offered at 125 Cents per acre in the W. & S. W. could not fail to have the effect already experienced of reducing the land here to half its value; and when the labour that will here produce one Hhd. of Tob[o] and ten barrels of flour, will there produce two Hhd[s] and twenty barrels, now so cheaply transportable to the destined outlets, a like effect on these articles must necessarily ensue. Already more Tob[o] is sent to N. Orleans, than is exported from Virginia to foreign markets; Whilst the Article of flour exceeding for the most part the demand for it, is in a course of rapid increase from new sources as boundless as they are productive. The great staples of Virg[a] have but a limited market which is easily glutted. They have in fact sunk more in price, and have a more threatening prospect, than the more Southern staples of Cotton & Rice.

The case is believed to be the same with her landed property. That it is so with her slaves is proved by the purchases made here for the market there. . . .

TO JOHN TYLER.[1]

MAD. MSS.

[1833]

In your speech of Februray 6th, 1833, you say: "He (Edmund Randolph) proposed (in the Federal Convention of 1787) a Supreme National Government, with a Supreme Executive, a Supreme Legislature, and a Supreme Judiciary, and a power in Congress to veto State laws. Mr. Madison I believe, Sir, was also an advocate of this plan of govt. If I run into error on this point, I can easily be put right. The design of this plan, it is obvious, was to render the States nothing more than the provinces of a great Government, to rear upon the ruins of the old Confederacy a Consolidated Government, one and indivisible."

I readily do you the justice to believe that it was far from your intention to do injustice to the Virginia Deputies to the Convention of 1787. But it is not the less certain that it has been done to all of them, and particularly to Mr. Edmund Randolph.

The resolutions proposed by him, were the result of a Consultation among the Deputies, the whole number, seven, being present. The part which Virga had borne in bringg abt the Convention, suggested the Idea that some such initiative step might be expected from their Deputation; and Mr. Randolph was designated for the task. It was perfectly understood that the Propositions committed no one to their precise tenor or form; and that the members of the Deputation wd be as free in discussing and shaping them as the other members of the Convention. Mr. R. was made the organ on the occasion, being then the Governor of the State, of distinguished talents,

[1] The letter is in the hand of Madison's Secretary, and was not sent. Tyler was then Senator from Virginia.

and in the habit of public Speaking. Gen! Washington, tho' at the head of the list was, for obvious reasons disinclined to take the lead. It was also foreseen that he would be immediately called to the presiding station.

Now what was the plan sketched in the Propositions?

They proposed that "the Articles of Confederation sh.d be so corrected and enlarged as to accomplish the objects of their Institution, namely common defence, security of liberty, and general welfare;" (the words of the Confederation.)

That a National Legislature, a National Executive and a National Judiciary should be established. (this organization of Departments the same as in the adopted Constitution.)

"That the right of suffrage in the Legislature sh.d be (not equal among the States as in the Confederation, but) proportioned to quotas of contribution or numbers of free inhabitants as might seem best in different cases: (the same corresponding in principle with the mixed rule adopted.)

"That it should consist of two branches; the first elected by the people of the several States, the second by the first. of a number nominated by the State Legislatures." (a mode of forming a Senate regarded as more just to the large States, than the equality which was yielded to the Small States by the compromise with them, but not material in any other view. In reference to the practicable equilibrium between the General & the State authorities, the comparative influence of the two modes will depend on the question whether the small States will incline most to the former or to the latter scale).

"That a National Executive, with a Council of Revision consisting of a number of the Judiciary, (w.c. Mr. Jefferson would have approved) and a qualified negative on the laws, be instituted, to be chosen by the Legislature for the term of—years, to be ineligible a second time, and with a compensation to be neither increased nor diminished so as to affect the existing magistracy. (there is nothing in this Ex modification materially different in its Constitutional bearing from that finally adopted in the Constitution of the U. S.)

That a National Judiciary be established, consisting of a Supreme appellate and inferior Tribunals, to hold their offices during good behavior, and with compensations not to be *increased* or diminished, so as to affect persons in office. (there can be nothing here subjecting it to unfavourable comparison with the article in the Constitution existing.)

"That provision ought to be made for the admission of new States lawfully arising within the limits of the U. S., wth the consent of a number of votes in the Nat^{l} Legislature less than the whole." (This is not at variance wth the existing provisions.)

"That a Republican Gov^{t} ought to be guarantied by the U. S. to each State. (this is among the existing provisions.)

"That provision ought to be made for amending the articles of Union, without requiring the Assent of the National Legislature. (this is done in the Const^{n})

"That the Legisl. Ex. & Judiciary powers of the several States ought to be bound by oath to support the articles of Union (this was provided with the emphatic addition of "anything in the Const^{n} or laws of the States notwithstanding.)

"That the act of the Convention, after the approbation of the (then) Cong. to be submitted to an assembly or assemblies of Representatives recommended by the several Legislatures to be expressly chosen by the people to consider & decide thereon (This was the course pursued)

So much for the structure of the Gov^{t} as proposed by Mr. Randolph, & for a few miscellaneous provisions. When compared with the Const^{n} as it stands what is there of a consolidating aspect that can be offensive to those who applaud approve or are satisfied with the Const:

Let it next be seen what were the powers proposed to be lodged in the Gov^{t} as distributed among its several Departments.

The Legislature, each branch possessing a right to originate acts, was to enjoy, 1. the *legislative* rights vested in the Cong$_{s}$

of the Confederation. (This must be free from objection, especially as the powers of that description were left to the selection of the Convention)

2. Cases to which the several States, would be incompetent or, in which the harmony of the U. S. might be intercepted by individual Legislation. (It cannot be supposed that these descriptive phrases were to be left in their indefinite extent to Legislative discretion. A selection & definition of the cases embraced by them was to be the task of the Convention. If there could be any doubt that this was intended & so understood by the Convention, it would be removed by the course of proceeding on them as recorded, in its Journal. Many of the propositions made in the Convention, fall within this remark; being, as is not unusual general in their phrase, but, if adopted to be reduced to their proper shape & specification.)

3. to negative all laws passed by the Several States contravening, in the opinion of the National Legislature, the Articles of Union, or any Treaty subsisting under their Authority. (The necessity of some constitutional and effective provision guarding the Const.n & laws of the Union ag.st violations of them by the laws of the States, was felt and taken for granted by all from the commencement, to the conclusion of the work performed by the Convention. Every vote, in the Journal involving the opinion, proves a unanimity among the Deputations on this point. A voluntary & unvaried concurrence of so many (then 13 with a prospect of continued increase) distinct & independent Authorities, in expounding & acting on a rule of Conduct, which must be the same for all, or in force in none, was a calculation forbidden by a knowledge of human nature, and especially so by the experience of the Confederacy, the defects of which were to be supplied by the Convention.

With this view of the subject, the only question was the mode of controul on the Individual Legislatures. This might be either preventive or corrective; the former by a negative on the State laws; the latter by a Legislative repeal by a judi-

cial supersedeas, or by an administrative arrest of them. The preventive mode as the best if equally practicable with the corrective, was brought by Mr. R. to the consideration of the Convention. It was tho' not a little favored, as appears by the votes in the Journal finally abandoned, as not reducible to practice. Had the negative been assigned to the Senatorial branch of the Govt. representing the State Legislatures, thus giving to the whole of these a controul over each, the expedient would probably have been still more favorably rec^{d} tho' even in that form, subject to insuperable objections, in the distance of many of the State Legislatures, and the multiplicity of the laws of each.

Of the corrective modes, a repeal by the National Legislature was pregnant with inconveniences rendering it inadmissible.

The only remaining safeguard to the Constitution and laws of the Union agst the encroachment of its members, and anarchy among themselves is that which was adopted, in the Declaration that the Constitution laws & Treaties of the U. S. should be the supreme law of the Land, and as such, be obligatory on the authorities of the States as well as those of the U. S.

The last of the proposed Legislative Powers was "to call forth the force of the Union agst any member failing to fulfil its duty under the articles of Union."

The evident object of this provision was not to enlarge the powers of the proposed Gov^{t} but to secure their efficiency. It was doubtless suggested by the inefficiency of the Confederate system, from the want of such a sanction; none such being expressed in its Articles; and if as Mr. Jefferson[1] argued, necessarily implied, having never been actually employed. The proposition as offered by Mr. R. was in general terms. It might have been taken into Consideration, as a substitute for, or as a supplement to the ordinary mode of enforcing laws by Civil process; or it might have been referred to cases

[1] See his published letter of Aug^{t} 4, 1787 to Ed Carrington—*Madison's Note.*

of territorial or other controversies between States and a refusal of the defeated party to abide by the decision; leaving the alternative of a Coercive interposition by the Govt of the Union, or a war between its members, and within its bowels. Neither of these readings nor any other, which the language wd bear, could countenance a just charge on the deputation or on Mr. Randolph, of contemplating a Consolidated Govt with unlimited powers.

The Executive powers do not cover more ground, than those inserted by the Convention to whose discretion the task of enumerating them was submitted. The proposed association with the Executive of a Council of Revision, could not give a consolidating feature to the plan.

The Judicial power in the Plan is more limited than the Jurisdiction described in the Const., with the exception of cases of "impeachment of any National officer," and questions which involve the National peace & harmony.

The trial of Impeacht is known to be one of the most difficult of Constl arrangemts The reference of it to the Judicial Dept may be presumed to have been suggested by the example in the Constitution of Virga The option seemed to lie between that & the other Depts of the Govt No example of an organization excluding all the Departs presenting itself. Whether the Judil mode proposed, was preferable to that inserted in the Const: or not, the difference cannot affect the question of a Consolidating aspect or tendency.

By questions involving "the Natl peace and harmony," no one can suppose more was meant than might be *specified* by the Convention as proper to be referred to the Judiciary, either by the Constn or the Constl Authority of the Legislature. They could be no rule, in that latitude, to a court, nor even to a Legislature with limited powers.

That the Convention understood the entire Resolutions of Mr. R to be a mere sketch in which omitted details were to be supplied and the general terms and phrases to be reduced to

their proper details, is demonstrated by the use made of them in the Convention. They were taken up & referred to a Com.e of the whole in that sense; discussed one by one; referred occasionally to special Com.s to Com.es of detail on special points, at length to a Com.e to digest & report the draught of a Const.n and finally to a Com.e of arrangement and diction.

On this review of the whole subject, candour discovers no ground for the charge, that the Resol.ns contemplated a Gov.t materially different from or more national than that in which they terminated, and certainly no ground for the charge of consolidating views in those from whom the Resol.ns proceeded.

What then is the ground on which the charge rests? It c.d not be on a plea that the plan of Mr. R. gave unlimited powers to the proposed Gover.t for the plan expressly aimed at a specification, & of course a limitation of the powers.

It c.d not be on the supremacy of the general Authority over the separate authorities, for that supremacy as already noticed, is more fully & emphatically established by the text of the Constitution.

It c. not be on the proposed ratification by the people instead of the States for such is the ratification on w.ch the Const.n is founded.

The charge must rest on the term National prefixed to the organized Dep.ts in the propositions of Mr. R. yet how easy it is to acc.t for the use of the term with.t taking it in a consolidating sense.

In the 1st. place. It contradistinguished the proposed Gov.t from the Confederacy w.ch it was to supersede.

2. As the System was to be a new & compound one, a nondescript without a technical appellation for it, the term "national" was very naturally suggested by its national features: 1. in being estab. not by the authority of State Leg.s but by the original auth.d of the people. 2. in its organization into Legisl. Ex. & Jud.l Depart. and 3. in its action on the

people of the States immediately, and not on the Govts. of the States, as in a Confederacy.

But what alone would justify & acct for the application of the term National to the proposed Govt. is that it wd. possess, exclusively all the attributes of a Natl Govt in its relations with other Nations, including the most essential one, of regulating foreign Commerce, with the effective means of fulfilling the oblig. & responsibty of the U. S. to other Nations. Hence it was that the term Natl was at once so readily applied to the new Govt and that it has become so universal & familiar. It may safely be affirmed that the same w. have been the case, whatever name might have been given to it by the propns. of Mr. R. or by the Convention. A Govt which alone is known & acknowledged by all foreign nations, and alone charged with the international relations, could not fail to be deemed & called at home, a Natl Govt

After all, in discussing & expounding the character & import of a Constn let candor decide whether it be not more reasonable & just to interpret the name or title by facts on the face of it, than to torture the facts by a bed of Procrustes into a fitness to the title.

I must leave it to yourself to judge whether this exposition of the Resolns in question be not sufficiently reasonable to protect them from the imputation of a consolidating tendency, and still more, the Virga Deputies from having that for their object.

With regard to Mr. R. particularly, is not some respect due to his public letter to the Speaker of ye H. of D. in which he gives for his refusal to sign the Constitn reasons irreconcilable with the supposition that he cd have proposed the Resolns in a meaning charged on them? Of Col Mason who also refused, it may be inferred from his avowed reasons, that he cd not have acquiesced in the propositions if understood or intended to effect a Conso Gov.

So much use has been made of Judge Yates's minutes of the debates in the Convention, that I must be allowed to remark

that they abound in inaccuracies, and are not free from gross errors some of which do much injustice to the arguments & opinions of particular members. All this may be explained without a charge of wilful misrepresentation, by the very desultory manner in which his notes appear to have been taken his ear catching particular expressions & losing qualifications of them; and by prejudices giving to his mind, all the bias which an honest one could feel. He & his colleague were the Representatives of the dominant party in N. York, which was opposed to the Convention & the object of it, which was averse to any essential change in the Articles of Confederation, which had inflexibly refused to grant even a duty of 5 per c^{t} on imports for the urgent debts of the Revolution; which was availing itself of the peculiar situation of New York, for taxing the consumption of her neighbours, and which foresaw that a primary aim of the Convention w^{d} be to transfer from the States to the common authority, the entire regulation of foreign commerce. Such were the feelings of the two Deputies, that on finding the Convention bent on a radical reform of the Federal system, they left it in the midst of its discussions and before the opinions & views of many of the members were drawn out to their final shape & practical application.

Without impeaching the integrity of Luther Martin, it may be observed of him also; that his report of the proceedings of the Convention during his stay in it, shews, by its colourings that his feelings were but too much mingled with his statements and inferences. There is good ground for believing that Mr. M. himself became sensible of this and made no secret of his regret, that in his address to the Legislature of his State, he had been betrayed by the irritated state of his mind, into a picture that might do injustice both to the Body and to particular members.

TO WILLIAM CABELL RIVES. MAD. MSS.

MONTP^{R}, March 12, 1833.

DEAR SIR I have rec^{d} your very kind letter of the 6th, from Washington, and by the same mail a copy of your late Speech in the Senate for which I tender my thanks. I have found as I expected, that it takes a very able and enlightening view of its subject. I wish it may have the effect of reclaiming to the doctrine & language held by all from the birth of the Constitution, & till very lately by themselves, those who now Contend that the States have never parted with an Atom of their sovereignty; and consequently that the Constitutional band which holds them together, is a mere league or partnership, without any of the characteristics of sovereignty or nationality.

It seems strange that it should be necessary to disprove this novel and nullifying doctrine; and stranger still that those who deny it should be denounced as Innovators, heretics & Apostates. Our political system is admitted to be a new Creation —a real nondescript. Its character therefore must be sought within itself; not in precedents, because there are none; not in writers whose comments are guided by precedents. Who can tell at present how Vattel and others of that class, would have qualified (in the Gallic sense of the term) a Compound & peculiar system with such an example of it as ours before them.

What can be more preposterous than to say that the States as united, are in no respect or degree,

a Nation, which implies sovereignty; altho' acknowledged to be such by all other Nations & Sovereigns, and maintaining with them, all the international relations, of war & peace, treaties, commerce, &c, and, on the other hand and at the same time, to say that the States separately are compleatly nations & sovereigns; although they can separately neither speak nor harken to any other nation, nor maintain with it any of the international relations whatever and would be disowned as Nations if presenting themselves in that character.

The nullifiers it appears, endeavor to shelter themselves under a distinction between a delegation and a surrender of powers. But if the powers be attributes of sovereignty & nationality & the grant of them be perpetual, as is necessarily implied, where not otherwise expressed, sovereignty & nationality according to the extent of the grant are effectually transferred by it, and a dispute about the name, is but a battle of words. The practical result is not indeed left to argument or inference. The words of the Constitution are explicit that the Constitution & laws of the U. S. shall be supreme over the Constitution & laws of the several States; supreme in their exposition and execution as well as in their authority. Without a supremacy in those respects it would be like a scabbard in the hand of a soldier without a sword in it. The imagination itself is startled at the idea of twenty four independent expounders of a rule that cannot exist, but in a meaning and operation, the same for all.

The conduct of S. Carolina has called forth not only the question of nullification; but the more formidable one of secession. It is asked whether a State by resuming the sovereign form in which it entered the Union, may not of right withdraw from it at will. As this is a simple question whether a State, more than an individual, has a right to violate its engagements, it would seem that it might be safely left to answer itself. But the countenance given to the claim shows that it cannot be so lightly dismissed. The natural feelings which laudably attach the people composing a State, to its authority and importance, are at present too much excited by the unnatural feelings, with which they have been inspired agst their brethren of other States, not to expose them, to the danger of being misled into erroneous views of the nature of the Union and the interest they have in it. One thing at least seems to be too clear to be questioned; that whilst a State remains within the Union it cannot withdraw its citizens from the operation of the Constitution & laws of the Union. In the event of an actual secession without the Consent of the Co-States, the course to be pursued by these involves questions painful in the discussion of them. God grant that the menacing appearances, which obtruded it may not be followed by positive occurrences requiring the more painful task of deciding them!

In explaining the proceedings of Virg^{a} in 98–99, the state of things at that time was the more properly appealed to, as it has been too much overlooked.

The doctrines combated are always a key to the arguments employed. It is but too common to read the expressions of a remote period thro' the modern meaning of them, & to omit guards agst misconstruction not anticipated. A few words with a prophetic gift, might have prevented much error in the glosses on those proceedings. The remark is equally applicable to the Constitution itself.

Having thrown these thoughts on paper in the midst of interruptions added to other dangers of inaccuracy, I will ask the favor of you to return the letter after perusal. I have latterly taken this liberty with more than one of my corresponding friends. And every lapse of very short periods becomes now a fresh apology for it.

Neither Mrs. M. nor myself have forgotten the promised visit which included Mrs. Rives, and we flatter ourselves the fulfilment of it, will not be very distant. Meanwhile we tender to you both our joint & affect^{e} salutations.

P. Script. I inclose a little pamphlet rec. a few days ago, which so well repaid my perusal, that I submit it to yours, to be returned only at your leisure. It is handsomely written, and its matter well chosen & interesting. A like task as well executed in every State w^{d} be of historical value; the more so as the examples might both prompt & guide researches, not as yet too late but rapidly becoming so.

TO HENRY CLAY. MAD. MSS.

June, 1833.

DEAR SIR, Your letter of May 28, was duly received.[1] In it you ask my opinion on the retention of the Land bill by the President.

It is obvious that the Constitution meant to allow the President an adequate time to consider the Bills &c presented to him, and to make his objections to them; and on the other hand that Cong^s^ should have time to consider and overrule the objections. A disregard on either side of what it owes to the other, must be an abuse, for which it would be responsible under the forms of the Constitution. An abuse on the part of the President, with a view sufficiently manifest, in a case of sufficient magnitude to deprive Cong^s^ of the opportunity of overruling objections to their bills, might doubtless be a ground for impeachment. But nothing short of the signature of the President, or a lapse of ten days without a return of his objections, or an overruling of the objections by $\frac{2}{3}$ of each House of Cong^s^., can give legal validity to a Bill. In order to qualify (in the French sense of the term) the retention of the Land bill by the President, the first inquiry is, whether a sufficient time was allowed him to decide on its merits; the next whether with a sufficient time to prepare his objections, he unnecessarily put it out of the power of Cong^s^ to decide on them. How far an anticipated passage of the Bill ought to enter into the sufficiency

[1] Clay's letter said that by 1842, he thought, Northern manufacturers would be able to sell most of their products without protection as cheaply as they could be bought in Europe.—*Chic. Hist. Soc. MSS.*

of the time for Executive deliberation, is another point for consideration. A minor one may be whether a silent retention or an assignment to Cong[s]. of the reasons for it, be the mode most suitable, to such occasions.

I hope with you that the compromizing tariff will have a course & effect avoiding a renewal of the contest between the S. and the North; and that a lapse of nine or ten years will enable the manufacturers to swim without the bladders which have supported them. Many considerations favor such a prospect. They will be saved in future much of the expence in *fixtures*, which they had to encounter, and in many instances unnecessarily incurred. They will be continually improving in the management of their business. They will not fail to improve occasionally on the machinery abroad. The reduction of duties on imported articles consumed by them will be equivalent to a direct bounty. There will probably be an increasing cheapness of food from the increasing redundancy of agricultural labour. There will within the experimental period be an addition of 4 or 5 millions to our population, no part or little of which will be needed for agricultural labour, and which will consequently be an extensive fund of manufacturing recruits. The current experience makes it probable, that not less than 50 or 60 thousand or more, of emigrants will annually reach the U. S. a large portion of whom will have been trained to manufactures and be ready for that employment.

With respect to Virg[a], it is quite probable from the progress already made in the Western Culture of Tob[o], and the rapid exhaustion of her virgin soil in which alone it can be cultivated with a chance of profit, that of the 40 or 50 thousand labourers on Tob[o], the greater part will be released from that employment, and be applicable to that of manufactures. It is well known that the farming system requires much fewer hands than Tob[o] fields.

Should a war break out in Europe involving the manufacturing nations the rise of the wages there will be another brace to the manufacturing establishments here. It will do more; it will prove to the "absolutists" for free trade that there is in the contingency of war, one exception at least to their Theory.

It is painful to observe the unceasing efforts to alarm the South by imputations ag[st] the North of unconstitutional designs on the subject of the slaves. You are right, I have no doubt in believing that no such intermeddling disposition exists in the Body of our Northern brethren. Their good faith is sufficiently guarantied by the interest they have, as merchants, as Ship owners, and as manufacturers, in preserving a Union with the slaveholding States. On the other hand, what *madness* in the South, to look for greater safety in disunion. It would be worse than jumping out of the Frying-pan into the fire: it w[d] be jumping into the fire for fear of the Frying-pan. The danger from the alarm is that the pride & resentment exerted by them may be an

overmatch for the dictates of prudence and favor the project of a Southern Convention insidiously revived, as promising by its Councils the best securities agst grievances of every sort from the North.

The case of the Tariff & Land bills cannot fail of an influence on the question of your return to the next session of Cong^{s}. They are both closely connected with the public repose.

TO BENJAMIN F. PAPOON. MAD. MSS.

MONTPELLIER, May 18, 1833.

DEAR SIR Your favor of the 13th ult: was duly rec^{d} and I thank you for the communication.

It cannot be doubted that the rapid growth of the individual States in population, wealth and power must tend to weaken the ties which bind them together. A like tendency results from the absence & oblivion of external danger, the most powerful controul on disuniting propensities, in the parts of a political community. To these changes in the condition of the States, impairing the cement of their Union, are now added the language & zeal which inculcate an incompatibility of interests between different Sections of the Country, and an oppression on the minor, by the major section, which must engender in the former a resentment amounting to serious hostility.

Happily these alienating tendencies are not without counter tendencies, in the complicated frame of our political system; in the geographical and

commercial relations among the States, which form so many links & ligaments, thwarting a separation of them; in the gradual diminution of conflicting interests between the great Sections of Country, by a surplus of labour in the agricultural section, assimilating it to the manufacturing section; or by such a success of the latter, without obnoxious aids, as will substitute for the foreign supplies which have been the occasion of our discords, those internal interchanges which are beneficial to every section; and, finally, in the obvious consequences of disunion, by which the value of Union is to be calculated.

Still the increasing self-confidence felt by the Members of the Union, the decreasing influence of apprehensions from without, and the natural aspirations of talented ambition for new theatres multiplying the chances of elevation in the lottery of political life, may require the co-operation of whatever moral causes may aid in preserving the equilibrium contemplated by the Theory of our compound Government. Among these causes may justly be placed appeals to the love and pride of country; & few could be made in a form more touching, than a well-executed picture of the Magical effect of our National Emblem, in converting the furious passions of a tumultuous soldiery into an enthusiastic respect for the free & united people whom it represented.

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TO —— ——.[1] MAD. MSS.

[1833.]

[*Majority Governments.*]

DEAR SIR,—You justly take alarm at the new doctrine that a majority Govt is of all other Govts the most oppressive. The doctrine strikes at the root of Republicanism, and if pursued into its consequences, must terminate in absolute monarchy, with a standing military force; such alone being impartial between its subjects, and alone capable of overpowering majorities as well as minorities.

But it is said that a majority Govt is dangerous only where there is a difference in the interest of the classes or sections composing the community; that this difference will generally be greatest in communities of the greatest extent; and that such is the extent of the U. S. and the discordance of interests in them, that a majority cannot be trusted with power over a minority.

Formerly, the opinion prevailed that a Republican Govt was in its nature limited to a small sphere; and was in its true character only when the sphere was so small that the people could, in a body, exercise the Govt over themselves.

The history of the ancient Republics, and those of a more modern date, had demonstrated the evils incident to popular assemblages, so quickly formed, so susceptible of contagious passions, so exposed to the misguidance of eloquent & ambitious leaders; and so apt to be tempted by the facility of forming interested majorities, into measures unjust and oppressive to the minor parties.

The introduction of the representative principle into modern Govts particularly of G. B. and her colonial offsprings, had shown the practicability of popular Govts in a larger sphere, and that the enlargement of the sphere was a cure for many of the evils inseparable from the popular forms in small communities.

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[1] The draft does not state to whom the letter was addressed. Probably it was not sent at all and was meant as a memorandum for posthumous use.

It remained for the people of the U. S., by combining a federal with a republican organization, to enlarge still more the sphere of representative Gov^t and by convenient partitions & distributions of power, to provide the better for internal justice & order, whilst it afforded the best protection ag^st external dangers.

Experience & reflection may be said not only to have exploded the old error, that repub^n Gov^ts could only exist within a small compas, but to have established the important truth, that as representative Gov^ts are necessary substitutes for popular assemblages; so an association of free communities, each possessing a responsible Gov^t under a collective authority also responsible, by enlarging the practicable sphere of popular governments, promises a consummation of all the reasonable hopes of the patrons of free Gov^t

It was long since observed by Montesquieu, has been often repeated since, and, may it not be added, illustrated within the U. S. that in a confederal system, if one of its members happens to stray into pernicious measures, it will be reclaimed by the frowns & the good examples of the others, before the evil example will have infected the others.

But whatever opinions may be formed on the general subjects of confederal systems, or the interpretation of our own, every friend to Republican Gov^t. ought to raise his voice ag^st the sweeping denunciation of majority Gov^ts as the most tyrannical and intolerable of all Gov^ts

The Patrons of this new heresy will attempt in vain to mask its anti-republicanism under a contrast between the extent and the discordant interests of the Union, and the limited dimensions and sameness of interests within its members. Passing by the great extent of some of the States, and the fact that these cannot be charged with more unjust & oppressive majorities than the smaller States, it may be observed that the extent of the Union, divided as the powers of Gov^t. are between it and its members, is found to be within the compass of a successful administration of all the departments

of Gov^t. notwithstanding the objections & anticipations founded on its extent when the Constitution was submitted to the people. It is true that the sphere of action has been and will be not a little enlarged by the territories embraced by the Union. But it will not be denied, that the improvements already made in internal navigation by canals & steamboats, and in turnpikes & railroads, have virtually brought the most distant parts of the Union, in its present extent, much closer together than they were at the date of the Federal Constitution. It is not too much to say, that the facility and quickness of intercommunication throughout the Union is greater now than it formerly was between the remote parts of the State of Virginia.

But if majority Gov^ts as such, are so formidable, look at the scope for abuses of their power within the individual States, in their division into creditors & debtors, in the distribution of taxes, in the conflicting interests, whether real or supposed, of different parts of the State, in the case of improving roads, cutting canals, &c., to say nothing of many other sources of discordant interests or of party contests, which exist or w^d arise if the States were separated from each other. It seems to be forgotten, that the abuses committed within the individual States previous to the present Constitution, by interested or misguided majorities, were among the prominent causes of its adoption, and particularly led to the provision contained in it which prohibits paper emissions and the violations of contracts, and which gives an appellate supremacy to the judicial department of the U. S. Those who framed and ratified the Constitution believed that as power was less likely to be abused by majorities in representative Gov^ts than in democracies, where the people assembled in mass, and less likely in the larger than in the smaller communities, under a representative Gov^t inferred also, that by dividing the powers of Gov^t and thereby enlarging the practicable sphere of government, unjust majorities would be formed with still more difficulty, and be therefore the less to be dreaded,

and whatever may have been the just complaints of unequal laws and sectional partialities under the majority Gov^t^ of the U. S. it may be confidently observed that the abuses have been less frequent and less palpable than those which disfigured the administrations of the State Gov^ts^ while all the effective powers of sovereignty were separately exercised by them. If bargaining interests and views have created majorities under the federal system, what, it may be asked, was the case in this respect antecedent to this system, and what but for this would now be the case in the State Gov^ts^. It has been said that all Gov^t^ is an evil. It w^d^ be more proper to say that the necessity of any Gov^t^ is a misfortune. This necessity however exists; and the problem to be solved is, not what form of Gov^t^ is perfect, but which of the forms is least imperfect; and here the general question must be between a republican Govern^t^ in which the majority rule the minority, and a Gov^t^ in which a lesser number or the least number rule the majority. If the republican form is, as all of us agree, to be preferred, the final question must be, what is the structure of it that will best guard ag^a^ precipitate counsels and factious combinations for unjust purposes, without a sacrifice of the fundamental principle of Republicanism. Those who denounce majority Gov^ts^ altogether because they may have an interest in abusing their power, denounce at the same time all Republican Gov^t^ and must maintain that minority governments would feel less of the bias of interest or the seductions of power.

As a source of discordant interests within particular States, reference may be made to the diversity in the applications of agricultural labour, more or less visible in all of them. Take for example Virginia herself. Her products for market are in one district Indian corn and cotton; in another, chiefly tobacco; in another, tob^o^ and wheat; in another, chiefly wheat, rye, and live stock. This diversity of agricultural interests, though greater in Virg^a^ than elsewhere, prevails in different degrees within most of the States.

Virg[a]. is a striking example also of a diversity of interests, real or supposed, in the great and agitating subjects of roads and water communications, the improvements of which are little needed in some parts of the State, tho' of the greatest importance in others; and in the parts needing them much disagreement exists as to the times, modes, & the degrees of the public patronage; leaving room for an abuse of power by majorities, and for majorities made up by affinities of interests, losing sight of the just & general interest.

Even in the great distinctions of interest and of policy generated by the existence of slavery, is it much less between the Eastern & Western districts of Virginia than between the Southern & Northern sections of the Union? If proof were necessary, it would be found in the proceedings of the Virg[a]. Convention of 1829–30, and in the Debates of her Legislature in 1830–31. Never were questions more uniformly or more tenaciously decided between the North & South in Cong[s]., than they were on those occasions between the West & the East of Virginia.

But let us bring this question to the test of the tariff itself [out of which it has grown,] and under the influences of which it has been inculcated, that a permanent incompatibility of interests exists in the regulations of foreign commerce between the agricultural and the manufacturing population, rendering it unsafe for the former to be under a majority power when patronizing the latter.

In all countries, the mass of people become, sooner or later, divided mainly into the class which raises food and raw materials, and the class which provides cloathing & the other necessaries and conveniences of life. As hands fail of profitable employment in the culture of the earth, they enter into the latter class. Hence, in the old world, we find the nations everywhere formed into these grand divisions, one or the other being a decided majority of the whole, and the regulations of their relative interests among the most arduous tasks of the Gov[t]. Although the mutuality of interest in the interchanges

useful to both may, in one view, be a bond of amity & union, yet when the imposition of taxes whether internal or external takes place, as it must do, the difficulty of equalizing the burden and adjusting the interests between the two classes is always more or less felt. When imposts on foreign commerce have a protective as well as a revenue object, the task of adjustment assumes a peculiar arduousness.

This view of the subject is exemplified in all its features by the fiscal & protective legislation of G. B. and it is worthy of special remark that there the advocates of the protective policy belong to the landed interest; and not as in the U. S. to the manufacturing interest; though in some particulars both interests are suitors for protection agst foreign competition.

But so far as abuses of power are engendered by a division of a community into the agricultural & manufacturing interests and by the necessary ascendency of one or the other as it may comprize the majority, the question to be decided is whether the danger of oppression from this source must not soon arise within the several States themselves, and render a majority Gov^{t} as unavoidable an evil in the States individually; as it is represented to be in the States collectively.

That Virginia must soon become manufacturing as well as agricultural, and be divided into these two great interests, is obvious & certain. Manufactures grow out of the labour not needed for agriculture, and labour will cease to be so needed or employed as its products satisfy & satiate the demands for domestic use & for foreign markets. Whatever be the abundance or fertility of the soil, it will not be cultivated when its fruits must perish on hand for want of a market. And is it not manifest that this must be henceforward more & more the case in this State particularly? The earth produces at this time as much as is called for by the home & the foreign markets; while the labouring population, notwithstanding the emigration to the West and the S. West, is fast increasing. Nor can we shut our eyes to the fact, that the rapid increase of the exports of flour & Tob^{o} from a new & more fertile soil will be

continually lessening the demand on Virginia for her two great staples, and be forcing her, by the inability to pay for imports by exports, to provide within herself substitutes for the former.

Under every aspect of the subject, it is clear that Virginia must be speedily a manufacturing as well as an agricultural State; that the people will be formed into the same great classes here as elsewhere; that the case of the tariff must of course among other conflicting cases real or supposed be decided by the republican rule of majorities; and, consequently, if majority govts. as such, be the worst of Govts. those who think & say so cannot be within the pale of the republican faith. They must either join the avowed disciples of aristocracy, oligarchy or monarchy, or look for a Utopia exhibiting a perfect homogeneousness of interests, opinions & feelings nowhere yet found in civilized communities. Into how many parts must Virginia be split before the semblance of such a condition could be found in any of them. In the smallest of the fragments, there would soon be added to previous sources of discord a manufacturing and an agricultural class, with the difficulty experienced in adjusting their relative interests in the regulation of foreign commerce if any, or if none in equalising the burden of internal improvement and of taxation within them. On the supposition that these difficulties could be surmounted, how many other sources of discords to be decided by the majority would remain. Let those who doubt it consult the records of corporations of every size such even as have the greatest apparent simplicity & identity of pursuits and interests.[1]

In reference to the conflicts of interests between the agricultural and manufacturing States, it is a consoling anticipation that, as far as the legislative encouragements to one may not involve an actual or early compensation to the other, it will accelerate a state of things in which the conflict between them

[1] The rest of the draft is not among the Madison MSS. and is supplied from the *Works* of Madison (Cong. Ed.).

will cease and be succeeded by an interchange of the products profitable to both; converting a source of discord among the States into a new cement of the Union, and giving to the country a supply of its essential wants independent of contingencies and vicissitudes incident to foreign commerce.

It may be objected to majority governments, that the majority, as formed by the Constitution, may be a minority when compared with the popular majority. This is likely to be the case more or less in all elective governments. It is so in many of the States. It will always be so where property is combined with population in the election and apportionment of representation. It must be still more the case with confederacies, in which the members, however unequal in population, have equal votes in the administration of the government. In the compound system of the United States, though much less than in mere confederacies, it also necessarily exists to a certain extent. That this departure from the rule of equality, creating a political and constitutional majority in contradistinction to a numerical majority of the people, may be abused in various degrees oppressive to the majority of the people, is certain; and in modes and degrees so oppressive as to justify ultra or anti-constitutional resorts to adequate relief is equally certain. Still the constitutional majority must be acquiesced in by the constitutional minority, while the Constitution exists. The moment that arrangement is successfully frustrated, the Constitution is at an end. The only remedy, therefore, for the oppressed minority is in the amendment of the Constitution or a subversion of the Constitution. This inference is unavoidable. While the Constitution is in force, the power created by it, whether a popular minority or majority, must be the legitimate power, and obeyed as the only alternative to the dissolution of all government. It is a favourable consideration, in the impossibility of securing in all cases a coincidence of the constitutional and numerical majority, that when the former is the minority, the existence of a numerical majority with justice on its side, and

its influence on public opinion, will be a salutary control on the abuse of power by a minority constitutionally possessing it: a control generally of adequate force, where a military force, the disturber of all the ordinary movements of free governments, is not on the side of the minority.

The result of the whole is, that we must refer to the monitory reflection that no government of human device and human administration can be perfect; that that which is the least imperfect is therefore the best government; that the abuses of all other governments have led to the preference of republican government as the best of all governments, because the least imperfect; that the vital principle of republican government is the *lex majoris partis*, the will of the majority; that if the will of a majority cannot be trusted where there are diversified and conflicting interests, it can be trusted nowhere, because such interests exist everywhere; that if the manufacturing and agricultural interests be of all interests the most conflicting in the most important operations of government, and a majority government over them be the most intolerable of all governments, it must be as intolerable within the States as it is represented to be in the United States; and, finally, that the advocates of the doctrine, to be consistent, must reject it in the former as well as in the latter, and seek a refuge under an authority master of both.

TO THOMAS S. GRIMKE. MAD. MSS.

MONTP^{R}, Jan^{y}. 6, 1834.

DEAR SIR Your letter of the 21st of Augst last was duly rec^{d}, and I must leave the delay of this acknowledgment of it to your indulgent explanation. I regret the delay itself less than the scanty supply of autographs requested from me. The truth is that

my files have been so often resorted to on such occasions, within a few years past, that they have become quite barren, especially in the case of names most distinguished. There is a difficulty also, not readily suggesting itself, in the circumstance, that wherever letters do not end on the first or third page, the mere name cannot be cut off without the mutilation of a written page Another circumstance is that I have found it convenient to spare my pigeon holes, by tearing off the superscribed parts where they could be separated; so that autographs have been deprived even of that resource.

You wish to be informed of the errors in your pamphlet alluded to in my last. The first related to the proposition of Doctor Franklin in favor of a religious service in the Federal Convention. The proposition was received and treated with the respect due to it; but the lapse of time which had preceded, with considerations growing out of it, had the effect of limiting what was done, to a reference of the proposition to a highly respectable Committee. This issue of it may be traced in the printed Journal. The Quaker usage, never discontinued in the State and the place where the Convention held its sittings, might not have been without an influence as might also, the discord of religious opinions within the Convention, as well as among the clergy of the spot. The error into which you had fallen may have been confirmed by a communication in the National Intelligencer some years ago, said to have been received through a respectable channel from a mem-

ber of the Convention. That the communication was erroneous is certain; whether from misapprehension or misrecollection, uncertain.

The other error lies in the view which your note L for the 18th page, gives of Mr. Pinckney's draft of a Constitution for the U. S., and its conformity to that adopted by the Convention. It appears that the Draft laid by Mr. P. before the Convention, was like some other important Documents, not among its preserved proceedings. And you are not aware that *insuperable* evidence exists, that the Draft in the published Journal, could not, in a number of instances, material as well as minute, be the same with that laid before the Convention. Take for an example of the former, the Article relating to the House of Representatives more than any, the corner stone of the Fabric. That the election of it by the *people* as proposed by the printed Draft in the Journal, could not be the mode of Election proposed in the lost Draft, must be inferred from the face of the Journal itself; for on the 6th of June, but a few days after the lost Draft, was presented to the Convention, Mr. P. moved to strike the word "*people*" out of Mr. Randolph's proposition; and to "Resolve that the members of the *first branch* of the National Legislature ought to be *elected* by the *Legislatures* of the *several States*. But there is other and most conclusive proof, that an election of the House of Representatives, by the *people*, could not have been the mode proposed by him. There are a number of other points in the published

Draft, some conforming most *literally* to the adopted Constitution, which it is *ascertainable*, could not have been the same in the Draft laid before the Convention. The Conformity & even identity of the Draft in the Journal, with the adopted Constitution, on points & details the result of conflicts and compromizes of opinion apparent in the Journal, have excited an embarrassing curiosity often expressed to myself or in my presence. The subject is in several respects a delicate one, and it is my wish that what is now said of it may be understood as yielded to your earnest request, and as entirely confined to yourself. I knew Mr. P. well, and was always on a footing of friendship with him. But this consideration ought not to weigh against justice to others, as well as against truth on a subject like that of the Constitution of the U. S.

The propositions of Mr. Randolph were the result of a Consultation among the seven Virginia Deputies, of which he, being at the time Governor of the State was the organ. The propositions were prepared on the supposition that, considering the prominent agency of Virg^{a} in bringing about the Convention, some initiative step might be expected from that quarter. It was meant that they should sketch a real and adequate Gov^{t} for the Union, but without committing the parties agst a freedom in discussing & deciding on any of them. The Journal shews that they were in fact the basis of the deliberations & proceedings of the Convention. And I am persuaded that altho not in a developed & organized

form, they sufficiently contemplated it; and moreover that they embraced a fuller outline of an adequate system, than the plan laid before the Convention, variant as that, ascertainably must have been, from the Draft now in print.

Memo.—No provision in the Draft of Mr. P. printed in the Journal for the mode of Electing the President of the U. S.

TO HENRY LEE. MAD. MSS.

MONTP^{R}, March 3, 1834.

Your letter of Nov^{r} 14 came safely tho' tardily to hand.

I must confess that I perceive no ground on which a doubt could be applied to the statement of Mr. Jefferson which you cite. Nor can it I think be difficult to account for my declining an Executive appointment under Washington and accepting it under Jefferson, without making it a test of my comparative attachment to them, and without looking beyond the posture of things at the two epochs.

The part I had borne, in the origin and adoption of the Constitution, determined me at the outset of the Gov^{t} to prefer a seat in the House of Representatives; as least exposing me to the imputation of selfish views; and where, if anywhere I could be of service in sustaining the Constitution agst the party adverse to it. It was known to my friends when making me a candidate for the Senate, that my choice was the other branch of the Legislature. Having commenced my Legislative career as I did,

I thought it most becoming to proceed under the original impulse to the end of it; and the rather as the Const[n] in its progress, was encountering trials, of a new sort in the formation of new Parties attaching adverse constructions to it.

The Crisis at which I accepted the Executive appointment under Mr. Jefferson is well known. My connexion with it, and the part I had borne in promoting his election to the Chief Magistracy, will explain my yielding to his pressing desire that I should be a member of his Cabinet.

I hope you received the copies of your father's letters to me, which were duly forwarded; and I am not without a hope that you will have been enabled to comply with my request of Copies of mine to him.

With friendly salutations

TO WILLIAM COGSWELL. MAD. MSS.

MONTPELLIER, March 10, 1834.

DEAR SIR,—Your letter of the 18th Ult. was duly received. You give me a credit to which I have no claim, in calling me "*the* writer of the Constitution of the U. S." This was not, like the fabled Goddess of Wisdom, the offspring of a single brain. It ought to be regarded as the work of many heads & many hands.

Your criticism on the Collocation of books in the Library of our University, may not be without foundation. But the doubtful boundary between some subjects, and the mixture of different subjects

in the same works, necessarily embarrass the task of classification.

Being now within a few days of my 84th year, with a decaying health & faded vision, and in arrears also of the reading I have assigned to myself, I have not been able sooner to acknowledge your politeness in sending me the two pamphlets. The sermon combats very ably the veteran error of entwining with the Civil an Ecclesiastical polity. Whether it has not left unremoved a fragment of the argumentative root of the combination is a question which I leave others to decide.

With friendly respects & salutations

TO JOHN M. PATTON. MAD. MSS.
(*Confidential*)

March 24, 1834.

DEAR SIR,—I have duly rec^{d} the copy of your speech on the "Virginia Resolutions." Tho' not permitting myself to enter into a discussion of the several topics embraced by them, for which indeed my present condition would unfit me, I will not deny myself the pleasure, of saying that you have done great justice to your views of them. I must say at the same time that the warmth of your feelings has done infinitely more than justice to any merits that can be claimed for your friend.

Should the controversy on removals from office, end in the establishment of a share in the power, as claimed for the Senate, it would materially vary the relations among the component parts of the

Gov^t and disturb the operation of the checks & balances as now understood to exist. If the right of the Senate be, or be made a constitutional one, it will enable that branch of the Gov^t to force on the Executive Department a continuance in office, even of the Cabinet officers, notwithstanding a change from a personal & political harmony with the President, to a state of open hostility towards him. If the right of the Senate be made to depend on the Legislature, it would still be *grantable* in that extent; and even with the exception of the Heads of Departments and a few other officers, the augmentation of the Senatorial patronage, and the new relation between the Senate directly, and the Legislature indirectly, with the Chief Magistrate, would be felt deeply in the general administration of the Government. The innovation, however modified would more than double the danger of throwing the Executive machinery out of gear, and thus arresting the march of the Gov^t altogether.

The Legislative power is of an elastic & Protean character, but too imperfectly susceptible of definitions & landmarks. In its application to tenures of office, a law passed a few years ago, declaring a large class of offices, vacant at the end of every four years and of course to be filled by new appointments. Was not this as much a removal as if made individually & in detail? The limitation might have been 3, 2, or 1 year; or even from session to session of Cong^s which would have been equivalent to a tenure at the pleasure of the Senate.

The light in which the large States would regard any innovation increasing the weight of the Senate, constructed and endowed as it is may be inferred from the difficulty of reconciling them to that part of the Constitution when it was adopted.

The Constitution of the U.S. may doubtless disclose from time to time faults which call for the pruning or the ingrafting hand. But remedies ought to be applied not in the paroxysms of party & popular excitements: but with the more leisure & reflection, as the Great Departments of Power according to experience may be successively and alternately in, and out of public favour; and as changes hastily accommodated to these vicissitudes would destroy the symmetry & the stability aimed at in our political system. I am making observations however very superfluous when addressed to you, and I quit them with a tender of the cordial regards & salutations w^{ch} I pray you to accept.

TO EDWARD COLES. MAD. MSS.

Aug. 29, 1834.

. . . . . .

You have certainly presented your views of the subject with great skill & great force.[1] But you have not sufficiently adverted to the position I have assumed, and which has been accorded, or rather assigned to me by others, of being withdrawn from *party*

[1] August 17, 1834, from Albemarle County, Coles wrote to Madison urging him to express his views on the powers of the President, on the veto power, and on the spoils system.—*Chic. Hist. Soc. MSS.*

agitations, by the debilitating effects of age and disease.

And how could I say that the present exciting questions in which you expect me to engage, are not party questions? How could I say that the Senate was not a Party, because representing the States, and claiming the support of the people; or that the other House representing the people and confiding in their support, with the Executive at their head, was less than a Party? How could I say that the former is the Nation, and the latter but a faction.

What a difference again between my relation to the Resolutions of 98–99, charged on my individual responsibility, and my common relation only to the Constitutional questions now agitated, to which might be added the difference of my present condition, from what it was at the date of my published exposition of those Resolutions, and the habit now of invalidating opinions emanating from me by a reference to my age & infirmities?

Would not candour & consistency oblige me in denouncing the heresies of one side, not to pass in silence those of the other? For claims are made by the Senate in opposition to the principles & practice of every Administration, my own included, and varying materially, in some instances, the relations between the Great Departments of the Government. A want of impartiality in this respect, would enlist me into one of the parties, shut the ear of the other; and discredit me with those, if there be now such, who are wavering between them.

How, in justice or in truth, could I join in the charge agᵗ the P. of claiming a power over the public money, including a right to apply it to whatever purpose he pleased, even to his own? However unwarrantable the removal of the deposits, or culpable the mode of effectuating it, the act has been admitted by some of his leading opponents, to have been, not a usurpation as charged, but an abuse only of power. And however unconstitutional the denial of a Legislative power over the Custody of the Public money, as being an Executive Prerogative, there is no appearance of a denial to the Legislature of an absolute and exclusive right to appropriate the public money, or of a claim for the Executive of an appropriating power, the charge nevertheless, pressed with most effect against him. The distinction is so obvious, and so essential, between a Custody and an appropriation, that candor would not permit a condemnation of the wrongful claim of custody, without condemning at the same time, the wrongful charge of a claim of appropriation.

Candour would require from me also a notice of the disavowal by the President, doubtless real, tho' informal, of the obnoxious meaning put on some of his acts, particularly his Proclamation; a notice which would detract from my credit with those who carefully keep the disavowal out of view, in their strictures on the Proclamation. When I remarked to you my entire condemnation of the Proclamation, I added "in the sense wᶜʰ it bore, but which it appeared, had been disclaimed." In fact I have in

conversations, from w^ch^ I apprehended *no publicity*, frankly pointed at what, I regarded as heretical doctrines on every side, my wish to avoid publicity being prescribed by my professed as well as proper abstraction from the polemic scene. I have accordingly, in my unavoidable answers to dinner invitations received from quarters adverse to each other, but equally expressing the kindest regard for me, endeavored to avoid involving myself in their party views, by confining myself to subjects in which all parties profess to concur, and to the proceedings of Virg^a^ generally referred to in the invitations, and with respect to which my adherence was well known.

You call my attention with much emphasis to "the principle openly avowed by the President & his friends, that offices & emoluments were the spoils of victory, the personal property of the successful candidate for the Presidency, to be given as rewards for electioneering services; and in general to be used as the means of rewarding those who support, and of Punishing those who do not support, the dispenser of the fund." I fully Agree in all the odium you attach to such a rule of action. But I have not seen any avowal of such a principle by the President, and suspect that few if any of his friends would openly avow it. The first, I believe who openly proclaimed the right & policy in a successful candidate for the Presidency to reward friends & punish enemies, by removals and appointments is now the most vehement, in branding the practice. Indeed, the principle if avowed without the practice, or practised without

the avowal, could not fail to degrade any Administration; both together completely so. The odium itself would be an antidote to the poison of the example, and a security agst the permanent danger apprehended from it.

What you dwell on most is, that nullification is more on the decline, and less dangerous than the popularity of the President, with which his unconstitutional doctrines is armed. In this I cannot agree with you. His popularity is evidently and rapidly sinking under the unpopularity of his doctrines. Look at the entire States which have abandoned him. Look at the increasing minorities in States where they have not yet become majorities. Look at the leading partizans who have abandoned and turned against him; and at the reluctant and qualified support given by many who still profess to adhere to him. It cannot be doubted that the danger and even existence of the parties which have grown up under the auspices of his name, will expire with his natural or his official life, if not previously to either.

On the other hand what more dangerous than Nullification, or more evident than the progress it continues to make, either in its original shape or in the disguises it assumes. Nullification has the effect of putting powder under the Constitution & Union, and a match in the hand of every party, to blow them up at pleasure. And for its progress, hearken to the tone in which it is now preached; cast your eye on its increasing minorities in most of

the S. States without a decrease in any one of them. Look at Virginia herself and read in the Gazettes, and in the proceedings of popular meetings, the figure which the anarchical principle now makes, in contrast with the scouting reception given to it but a short time ago.

It is not probable that this offspring of the discontents of S. Carolina, will ever approach success, in a majority of the States. But a susceptibility of the contagion in the Southern States is visible; and the danger is not to be concealed that the sympathies arising from known causes, and the inculcated impression of a permanent incompatibility of interests between the South & the North, may put it in the power of popular leaders aspiring to the highest stations, and despairing of success on the Federal theatre, to unite the South, on some critical occasion, in a course that will end in creating a new theatre of great tho' inferior extent. In pursuing this course, the first and most obvious step is nullification; the next secession; & the last, a farewell separation. How near was this course being lately exemplified? and the danger of its recurrence in the same, or some other quarter, may be increased by an increase of restless aspirants, and by the increasing impracticability of retaining in the Union a large & cemented section against its will. It may indeed happen that a return of danger from abroad, or a revived apprehension of danger at home, may aid in binding the States in one political system, or that the geographical and commercial ligatures, may

have that effect; or that the present discord of interests between the North & the South, may give way to a less diversity in the applications of labour, or to the mutual advantage of a safe & constant interchange of the different products of labour in different sections. All this may happen, and with the exception of foreign hostilities, hoped for. But in the mean time local prejudices and ambitious leaders may be but too successful, in finding or creating occasions, for the nullifying experiment of breaking a more beautiful China vase[1] than the British Empire ever was, into parts which a miracle only could reunite.

I have thought it due to the affectionate interest you take in what concerns me to submit the observations here sketched, crude as they are. The field they open for reflection I leave to yours, and to your opportunity which I hope will be a long one, of witnessing the developments & vicissitudes of the future.

TO WILLIAM H. WINDER.[2] MAD. MSS.

MONTPR., Sepr. 15, 1834.

DEAR SIR I am sensible of the delay in acknowledging your letter of and regret it. But apart from the crippled condition of my health, which almost forbids the use of the pen, I could not forget

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[1] See Franklin's letter to Lord Howe in 1776.—*Madison's Note*. The letter is of July 20 and may be seen in the *Writings of Benjamin Franklin* (Smyth) vi., 458.

[2] The son of General William H. Winder.

that I was to speak of occurrences after a lapse of 20 years, and at an age in its 84th year; circumstances so readily and for the most part justly referred to, as impairing the confidence due to recollections & opinions.

You wish me to express personally "my approval of your father's character & conduct at the battle of Bladensburg," on the ground "of my being fully acquainted with everything connected with them and of an ability to judge of which no man can doubt."

You appear not to have sufficiently reflected, that having never been engaged in military service, my judg^{t} in the case could not have the weight with others, which your partiality assumes for it, but might rather expose me to a charge of presumption in deciding on points purely of a professional description. Nor was I on the field as a spectator, till the order of the battle had been formed & had approached the moment of its commencement.

With respect to the order of the battle, that being known, will speak for itself; and the gallantry, activity & zeal of your father during the action had a witness in every observer. If his efforts were not rewarded with success, candour will find an explanation in the peculiarities he had to encounter; especially in the advantage possessed by the veteran troops of the Enemy over a militia, which however brave & patriotic, could not be a match for them in the open field.

I cannot but persuade myself that the evidence on record, and the verdict on the Court of enquiry,

will outweigh & outlive censorious comments doing injustice to the character & memory of your father. For myself, I have always had a high respect for his many excellent qualities, and am gratified by the assurance you give me, of the place I held in his esteem & regard.

TO MANN BUTLER. MAD. MSS.

Oct. 11, 1834.

D^R^ SIR I have rec^d^ your letter of the 21 ult. in which you wish to obtain my recollection of what passed between M^r^ John Brown and me on the overtures of Gardoqui "that if the people of Kentucky would erect themselves into an independent State, and appoint a proper person to negotiate with him, he had authority for that purpose and would enter into an arrangement with them for the exportation of their produce to New Orleans."

My recollection, with which, references in my manuscript papers accord, leaves no doubt that the overture was communicated to me by Mr. Brown. Nor can I doubt, that, as stated by him, I expressed the opinion and apprehension, that a knowledge of it in Kentucky might in the excitements there, be mischievously employed. This view of the subject evidently resulted from the natural and known impatience of the W people on the waters of the Mississippi for a market for the products of their exuberant soil; from the distrust of the Federal policy produced by the project of surrendering the use of that river for a term of many years; and from

a coincidence of the overture, in point of time, with the plan on foot, for consolidating the Union by arming it with new powers, an object, to embarrass & defeat which the dismembering aims of Spain would not fail to make the most tempting sacrifices, and to spare no intrigues.[1]

I owe it to Mr. Brown, with whom I was in intimate friendship, when we were associates in public life, to observe that I always regarded him whilst steadily attentive to the interests of his constituents, as duly impressed with the importance of the Union and anxious for its prosperity.

Of the other particular enquiries in your letter my great age now in its 84th year, and with more than the usual infirmities, will I hope absolve me from undertaking to speak, without more authoritative aids to my memory than I can avail myself of. In what relates to Gen! Wilkinson, official investigations in the archives of the War Department, and the files of M^r^ Jefferson, must of course be among the important sources of light you wish for.

It would afford me pleasure to aid the interesting work which occupies your pen by materials worthy of it. But I know not that I could point to any which are not in print or in public offices, and which if not already known to you are accessible to your researches. I can only therefore wish for your historical task all the success which the subject merits,

[1] Madison's advices concerning affairs in Kentucky had come chiefly from John Brown, George Muter, and John Campbell. See *ante*, Vol. II.

and which is promised by the qualifications ascribed to the author.

I regret the tardiness of this acknowledgment of your letter. My feeble condition and frequent interruptions are the apology, which I pray you to accept with my respects & my cordial salutation.

TO DANIEL DRAKE. MAD. MSS.

MONTP^{R}, Jan^{y} 12, 1835.

DEAR SIR The copy of your "Discourse on the History character, and prospects of the West," was duly received,[1] and I have read with pleasure, the instructive views taken of its interesting and comprehensive theme. Should the youth addressed and their successors, follow your advice, and their example be elsewhere imitated in noting from period to period the progress and changes of our country under the aspects adverted to, the materials, added to the supplies of the decennial Census, improved as that may be, will form a treasure of incalculable value to the Philosopher, the Lawgiver and the Political Economist. Our history, short as it is, has already disclosed great errors sanctioned by great names, in political science, and it may be expected to throw new lights on problems still to be decided.

The "Note" at the end of the discourse, in which the geographical relations of the States are delineated,

[1] He organized the medical department of Cincinnati College this year, and the address was doubtless before that or some other college.

merits particular attention. Hitherto hasty observers, and unfriendly prophets, have regarded the Union as too frail to last, and to be split at no distant day, into the two great divisions of East and West. It is gratifying to find that the ties of interest are now felt by the latter not less than the former: ties that are daily strengthened by the improvements made by art in the facilities of beneficial intercourse. The positive advantages of the Union would alone endear it to those embraced by it; but it ought to be still more endeared by the consequences of disunion, in the jealousies & collisions of Commerce, in the border wars, pregnant with others, and soon to be engendered by animosities between the slaveholding, and other States, in the higher toned Gov^ts^ especially in the Executive branch, in the military establishments provided ag^st^ external danger, but convertible also into instruments of domestic usurpation, in the augmentations of expence, and the abridgment, almost to the exclusion of taxes on consumption (the least unacceptable to the people) by the facility of smuggling among communities locally related as would be the case. Add to all these the prospect of entangling alliances with foreign powers multiplying the evils of internal origin. But I am rambling into observations, with proof in the "Discourse" before me that however just they cannot be needed.

With the thanks Sir which I owe to your politeness in favoring me with it I tender my respectful & cordial salutations.

MADISON'S WILL.[1]

April 19, 1835.

I, James Madison, of Orange County, do make this my last will and testament, hereby revoking all wills by me heretofore made.

I devise to my dear wife during her life the tract of land whereon I live, as now held by me, except as herein otherwise devised, and if she shall pay the sum of nine thousand dollars .....
within three years .....
after my death, to be distributed as herein after directed, then I devise the same land to her in fee simple. If my wife shall not pay the said sum of money within the period before mentioned, then and in that case it is my will and I hereby direct that at her death the said land shall be sold for cash or on a credit, as may be deemed most for the interest of those entitled to the proceeds thereof. If my wife shall pay the said sum of money within the time before specified as aforesaid, so as to become entitled to the fee simple in the said land, then I bequeath the said sum of money to be equally divided among all my nephews and nieces, which shall at that time be living, and in case of any of them being dead, leaving issue at that time living, then such issue shall take the place of it's or their deceased parent. It is my further will that in case my wife shall not pay the said sum of money within the time before named and it shall therefore be necessary to sell the said land at her death as before directed, then after deducting the twentieth part of the purchase money of the said land, which deducted part I hereby empower my wife to dispose of by her Will, I bequeath the residue of the purchase money and in case of her dying without having disposed of such deducted part by her Will, I bequeath the whole of the purchase money of the said land to my nephews and nieces or the issues of such of them as may be dead in the manner before directed in

[1] Orange C. H. Records.

regard to the money to be paid by her in case she shall pay the same. I devise my grist mill, with the land attached thereto, to my wife during her life, and I hereby direct the same to be sold at her death and the purchase money to be divided as before directed in regard to the proceeds of the tract whereon I live. I devise to my niece, Nelly C. Willis and her heirs the lot of land lying in Orange County purchased of Boswell Thornton on which is a limestone quarry and also my interest in a tract of land lying in Louisa County, reputed to contain two hundred acres and not far from the said Limestone quarry. I devise my house and lot or lots in the city of Washington to my beloved wife and her heirs.

I give and bequeath my ownership in the negroes and people of colour held by me to my dear wife, but it is my desire that none of them should be sold without his or her consent or in case of their misbehaviour; except that infant children may be sold with their parent who consents for them to be sold with him or her, and who consents to be sold.

I give all my personal estate of every description, ornamental as well as useful, except as herein after otherwise given, to my dear wife; and I also give to her all my manuscript papers, having entire confidence in her discreet and proper use of them, but subject to the qualification in the succeeding clause.

Considering the peculiarity and magnitude of the occasion which produced the convention at Philadelphia in 1787, the Characters who composed it, the Constitution which resulted from their deliberation, it's effects during a trial of so many years on the prosperity of the people living under it, and the interest it has inspired among the friends of free Government, it is not an unreasonable inference that a careful and extended report of the proceedings and discussions of that body, which were with closed doors, by a member who was constant in his attendance, will be particularly gratifying to the people of the United States, and to all who take an interest in the progress of political science and the cause of true liberty. It is my desire that the report as made by me should be published

under her authority and direction, as the publication may yield a considerable amount beyond the necessary expenses thereof; I give the net proceeds thereof to my wife charged with the following legacies to be paid out of that fund only —first I give to Ralph Randolph Gurley, Secretary of the American Colonization society and to his executors and administrators, the sum of two thousand dollars, in trust nevertheless, that he shall appropriate the same to the use and purposes of the said society, whether the same be incorporated by law or not. I give fifteen hundred dollars to the University of Virginia, one thousand dollars to the College at Nassau Hall at Princeton, New Jersey, and one thousand dollars to the College at Uniontown, Pennsylvania and it is my will that if the said fund should not be sufficient to pay the whole of the three last legacies, that they abate in proportion.

I further direct that there be paid out of the same fund to the guardian of the three sons of my deceased nephew, Robert L. Madison, the sum of three thousand dollars, to be applied to their education in such proportions as their guardian may think right—I also give, out of the same fund to my nephew Ambrose Madison two thousand dollars to be applied by him to the education of his sons in such proportions as he may think right, and I also give out of the same fund the sum of five hundred dollars to each of the daughters of my deceased niece, Nelly Baldwin and if the said fund shall not be sufficient to pay the whole of the legacies for the education of my great nephews as aforesaid and the said legacies to my great nieces, then they are to abate in proportion.

I give to the University of Virginia all that portion of my Library of which it has not copies of the same editions, and which may be thought by the Board of Visitors not unworthy of a place in it's Library, reserving to my wife the right first to select such particular books & pamphlets as she shall choose, not exceeding three hundred volumes.

In consideration of the particular and valuable aids received from my brother in law, John C. Payne and the affection

which I bear him, I devise to him and his heirs two hundred and forty acres of land on which he lives, including the improvements, on some of which he has bestowed considerable expense to be laid off adjoining the lands of Reuben and James Newman in a convenient form for a farm so as to include woodland and by the said Mr Newmans. I bequeath to my step son, John Payne Todd the case of Medals presented me by my friend George W. Erving and the walking staff made from a timber of the frigate Constitution and presented me by Commodore Elliot, her present Commander.

I desire the gold mounted walking staff bequeathed to me by my late friend Thomas Jefferson be delivered to Thomas J. Randolph as well in testimony of the esteem I have for him as of the knowledge I have of the place he held in the affection of his grand-father. To remove every doubt of what is meant by the terms tract of land whereon I live, I here declare it to comprehend all land owned by me and not herein otherwise devised away. I hereby appoint my dear wife to be sole executrix of this my Will and desire that she may not be required to give security for the execution thereof and that my estate be not appraised. IN testimony hereof—I have this fifteenth day of April, one thousand eight hundred and thirty five—signed, sealed, published and declared this to be my last Will & Testament.

We have signed in presence of the testator and of each other, JAMES MADISON. (Seal)

Robert Taylor.
Reuben Newman Sr.
Reuben Newman Jr.
Sims Brockman.

I, James Madison do annex this Codicil to my last will—as above & to be taken as part thereof. It is my will that the nine thousand dollars to be paid by my wife and distributed among my nephews & Nieces, may be paid into the Bank of Virginia, or into the Circuit Superior Court of Chancery for Orange, within three years after my death.

I direct that the proceeds from the sale of my Grist Mill & the land annexed sold at the death of my wife shall be paid to Ralph Randolph Gurly, secretary of the American *Colonization* society and to his executors & administrators, in trust and for the purposes of the said society, whether the same be incorporated by law or not.

This Codicil is written wholly by and signed by my own hand this nineteenth day of April 1835. JAMES MADISON.

At a monthly Court held for the county of Orange at the Courthouse on Monday the 25th of July, 1836, This last Will and testament of James Madison deceased, with the codicil thereto being offered for probate by Dolly P. Madison, the will was duly proved by the oaths of Robert Taylor, Reuben Newman Sr., and Sims Brockman, attesting witnesses thereto and there being no subscribing witnesses to the codicil, Robert Taylor William Madison and Reynolds Chapman were sworn severally and deposed that they were well acquainted with the hand writing of the said James Madison, deceased, and verily believed that the said codicil and the name of the said James Madison thereto affixed were wholly written by the testator, whereupon the said Will with the Codicil thereto was established as the last Will and Testament of the said James Madison, deceased, and ordered to be recorded. And on the motion of Dolly P. Madison the executrix named in the will, who made oath according to law and entered into bond without security, (the will directing that none should be required) in the penalty of one hundred thousand dollars conditioned as the law directs—Certificate was granted her for obtaining a probate thereof in due form.

Teste.

A Copy—Teste:

C. W. WOOLFOLK, Clerk

Orange Circuit Court, Va.

TO W. A. DUER.[1]

MONTPELLIER, June 5th, 1835.

DEAR SIR—I have received your letter of April 25th, and with the aid of a friend and amanuensis, have made out the following answer:

On the subject of Mr. Pinckney's proposed plan of a Constitution, it is to be observed that the plan printed in the Journal was not the document actually presented by him to the Convention. That document was no otherwise noticed in the proceedings of the Convention than by a reference of it, with Mr. Randolph's plan, to a committee of the whole, and afterwards to a committee of detail, with others; and not being found among the papers left with President Washington, and finally deposited in the Department of State, Mr. Adams, charged with the publication of them, obtained from Mr. Pinckney the document in the printed Journals as a copy supplying the place of the missing one. In this there must be error, there being sufficient evidence, even on the face of the Journals, that the copy sent to Mr. Adams could not be the same with the document laid before the Convention. Take, for example, the article constituting the House of Representatives the corner-stone of the fabric, the identity, even verbal, of which, with the adopted Constitution, has attracted so much notice. In the first place, the details and phraseology of the Constitution appear to have been anticipated. In the next place, it appears that within a few days after Mr. Pinckney

[1] From the *Works of Madison* (Cong. Ed.).

presented his plan to the Convention, he moved to strike out from the resolution of Mr. Randolph the provision for the election of the House of Representatives by the people, and to refer the choice of that House to the Legislatures of the States, and to this preference it appears he adhered in the subsequent proceedings of the Convention. Other discrepancies will be found in a source also within your reach, in a pamphlet published by Mr. Pinckney soon after the close of the Convention, in which he refers to parts of his plan which are at variance with the document in the printed Journal. A friend who had examined and compared the two documents has pointed out the discrepancies noted below.[1]

[1] Discrepancies noted between the plan of Mr. C. Pinckney as furnished by him to Mr. Adams, and the plan presented to the Convention as described in his pamphlet.

The pamphlet refers to the following provisions which are not found in the plan furnished to Mr. Adams as forming a part of the plan presented to the Convention: 1. The Executive term of service 7 years. 2. A council of revision. 3. A power to convene and prorogue the Legislature. 4. For the junction or division of States. 5. For enforcing the attendance of members of the Legislature. 6. For securing exclusive right of authors and discoverers.

The plan, according to the pamphlet, provided for the appointment of all officers, except judges and ministers, by the Executive, omitting the consent of the Senate required in the plan sent to Mr. Adams. Article numbered 9, according to the pamphlet, refers the decision of disputes between the States to the mode prescribed under the Confederation. Article numbered 7, in the plan sent to Mr. Adams, gives to the Senate the regulating of the mode. There is no numerical correspondence between the articles as placed in the plan sent to Mr. Adams, and as noted in the pamphlet, and the latter refers numerically to more than are contained in the former.

It is remarkable, that although the plan furnished to Mr. Adams enumerates, with such close resemblance to the language of the Constitution as adopted, the following provisions, and among them the

Further evidence[1] on this subject, not within your own reach, must await a future, perhaps a posthumous disclosure.

One conjecture explaining the phenomenon has been, that Mr. Pinckney interwove with the draught sent to Mr. Adams passages as agreed to in the Convention in the progress of the work, and which, after a lapse of more than thirty years, were not separated by his recollection.

The resolutions of Mr. Randolph, the basis on which the deliberations of the Convention proceeded, were the result of a consultation among the Virginia

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fundamental article relating to the constitution of the House of Representatives, they are unnoticed in his observations on the plan of Government submitted by him to the Convention, while minor provisions, as that enforcing the attendance of members of the Legislature, are commented on. I cite the following, though others might be added: [1] To subdue a rebellion in any State on application of its Legislature. [2] To provide such dock-yards and arsenals, and erect such fortifications, as may be necessary for the U. States, and to exercise exclusive jurisdiction therein. [3] To establish post and military roads. [4] To declare the punishment of treason, which shall consist only in levying war against the United States, or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses. [5] No tax shall be laid on articles exported from the States.

1. Election by the people of the House of Representatives. (Not improbably unnoticed, because the plan presented by him to the Convention contained his favourite mode of electing the House of Representatives by the State Legislatures, so essentially different from that of an election by the people, as in the Constitution recommended for adoption).—*Madison's Note.*

2. The Executive veto on the laws. See the succeeding numbers as above.

[1] Alluding particularly to the debates in the Convention and the letter of Mr. Pinckney of March 28th, 1789, to Mr. Madison. [This note not included in the letter sent to Mr. Duer.]—*Madison's Note.*

Deputies, who thought it possible that, as Virginia had taken so leading a part[1] in reference to the Federal Convention, some initiative propositions might be expected from them. They were understood not to commit any of the members absolutely or definitively on the tenor of them. The resolutions will be seen to present the characteristic provisions and features of a Government as complete (in some respects, perhaps, more so) as the plan of Mr. Pinckney, though without being thrown into a formal shape. The moment, indeed, a real Constitution was looked for as a substitute for the Confederacy, the distribution of the Government into the usual departments became a matter of course with all who speculated on the prospective change, and the form of general resolutions was adopted as the most convenient for discussion. It may be observed, that in reference to the powers to be given to the General Government the resolutions comprehended as well the powers contained in the articles of Confederation, without enumerating them, as others not overlooked in the resolutions, but left to be developed and defined by the Convention.

With regard to the plan proposed by Mr. Hamilton, I may say to you, that a Constitution such as you describe was never proposed in the Convention, but was communicated to me by him at the close of it.

[1] Virginia proposed, in 1786, the Convention at Annapolis, which recommended the Convention at Philadelphia, of 1787, and was the first of the States that acted on, and complied with, the recommendation from Annapolis. [This note not included in the letter sent to Mr. Duer.]—*Madison's Note.*

It corresponds with the outline published in the Journal. The original draught being in possession of his family and their property, I have considered any publicity of it as lying with them.

Mr. Yates's notes, as you observe, are very inaccurate; they are, also, in some respects, grossly erroneous. The desultory manner in which he took them, catching sometimes but half the language, may, in part, account for it. Though said to be a respectable and honorable man, he brought with him to the Convention the strongest prejudices against the existence and object of the body, in which he was strengthened by the course taken in its deliberations. He left the Convention, also, long before the opinions and views of many members were finally developed into their practical application. The passion and prejudice of Mr. L. Martin betrayed in his published letter could not fail to discolour his representations. He also left the convention before the completion of their work. I have heard, but will not vouch for the fact, that he became sensible of, and admitted his error. Certain it is, that he joined the party who favored the Constitution in its most liberal construction.

I can add little to what I have already said in relation to the agency of your father in the adoption of the Federal Constitution. My only correspondence with him was a short one, introduced by a letter from him written during the Convention of New York, at the request of Mr. Hamilton, who was too busy to write himself, giving and requesting informa-

tion as to the progress of the Constitution in New York and Virginia. Of my letter or letters to him I retain no copy. The two letters from him being short, copies of them will be sent if not on his files, and if desired. They furnish an additional proof that he was an ardent friend of the depending Constitution.

I have marked this letter "confidential," and wish it to be considered for yourself only. In my present condition, enfeebled by age and crippled by disease, I may well be excused for wishing not to be in any way brought to public view on subjects involving considerations of a delicate nature. I thank you, sir, for your kind sentiments and good wishes, and pray you to accept a sincere return of them.[1]

[1] The following analysis of the Pinckney plan was made by Madison: [1835]

In the plan of M[r] Pinkney as presented to M[r] Adams and published in Journal	Plan as commented on in Pamphlet
Article 1. Style—	Not adverted to
2. Division of Legislative power in two Houses.	recommended as essential page 8.
3. Members of H. of D. to be chosen by the people &ce.	Silent.
4. Senate to be elected by the H. of Del. &c.	recommended page 9, but the 4[th] article relates to extending rights of Citizens of each State throughout U. S., the delivery of fugitives from justice on demand, & the giving faith & credit to records & proceedings of each— vide Art. 12 & 13.

TO CHARLES FRANCIS ADAMS.[1]

MONTPELLIER, Oct. 12, 1835.

(*Private*)

DEAR SIR:

I have received your letter of Sept. 30th, with a copy of "An Appeal from the New to the Old

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5. relates to the mode of electing the H. of Del. by the people & rules &ce. Every bill to be presented to the *President* for his revision.

This article declares that individual States shall not exercise certain powers, founded on the principles of the 6th of the Confederation. A *Council* of revision is stated to be incorporated in his plan page 9. Vide Art. 11, for prohibition—empowers Congress to raise troops, & to levy taxes according to numbers of whites and $\frac{3}{5}$ of other descriptions.

6. powers of the Legislature enumerated & all constitutional acts thereof and treaties declared to be the supreme law & the judges bound thereby.

This article is stated to be an important alteration in the fed. system giving to Congress, not only a revision but a negative on the State laws. The States to retain only local legislation limited to concerns affecting each only, vide Art. 11th

Article 6th "all laws regulating commerce shall require the assent of two thirds of the members present in each House."

"In all those important questions where the present Confederation has made the assent of nine States necessary, I have made the assent of $\frac{2}{3}$ds of both Houses, when assembled in Congress, and added to the number the regulation of trade and acts for laying an Impost and raising a revenue."

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[1] Copy of the original kindly furnished by Charles Francis Adams, Esq., of Boston.

Whigs." The pamphlet contains very able and interesting "views" of its subject.

The claims for the Senate of a share in the removal from office, and for the legislature an authority to regulate its tenure, have had powerful advocates.

The 14th article gives the Legislature power to admit new States into the Union on the same terms with the original States by ⅔ of both Houses, nothing further

"I have also added an article authorizing the United States, upon petition from the majority of the citizens of any State, or Convention authorized for that purpose, and of the Legislature of the State to which they wish to be annexed, or of the States among which they are willing to be divided, to consent to such junction or division, on the terms mentioned in the article."

no such provision.

page 25. "a provision respecting the attendance of the members of both Houses; the penalties under which their attendance is required, are such as to insure it, as we are to suppose no man would willingly expose himself to the ignominy of a disqualification."

"All criminal offences (except in cases of impeachment) shall be tried in the State where they shall be committed. The trials shall be open & public, & be by Jury."

Trial by Jury is provided for "in all cases, criminal as well as *Civil*."

Article 9. gives the legislative power to establish Courts of law, equity & admiralty & relates to the appointment & compensation of judges—one to be the Supreme Court—its jurisdiction over all cases under the

The 9th article respecting the appointment of Federal Courts, for deciding controversies between different States, is the same with the Confederation; but this may with propriety be left to the Supreme Judicial & *article 7th*

I must still think, however, that the text of the Constitution is best interpreted by reference to the tripartite theory of Government; to which practice has conformed, and which so long and uniform a practice would seem to have established.

The face of the Constitution and the journalized

laws of U. S. or affecting ambassadors &c. to the trial of impeachment of officers of U. S.; cases of admiralty & maritime jurisdiction—cases where original and where appellate.

Article 10. after first Census the H. of D. shall apportion the Senate by electing one Senator for every — members each State shall have in H. of D.—each State to have at least one member.

See article 6th.

To establish uniform rules of naturalization in Article 6.

of the plan gives this power to the Senate of regulating the manner of decision).

The 10th article gives Congress a right to institute such offices as are necessary; of erecting a Federal Judicial Court; and of appointing Courts of Admiralty.

page 19. The exclusive right of coining money &c. is essential to assuring the federal funds—&c.

page 20. In all important questions where the Confederation made the assent of 9 States necessary I have made $\frac{2}{3}$ of both houses —and have added to them the regulation of trade and acts for levying Impost & raising revenue.

page 20. The exclusive right of making regulations for the government of the Militia ought to be vested in the Federal Councils &c.

page 22. The article empowering the U. S. to admit new States indispensable. Vide Article 14.

page 23. The Fed. Govt. should possess the exclusive right of de-

proceedings of the Convention strongly indicate a partiality to that theory, then at its zenith of favor among the most distinguished commentators on the organizations of political power.

The right of suffrage, the rule of apportioning representation, and the mode of appointing to, and

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claring on what terms the privileges of citizenship & naturalization should be extended to foreigners.

Article 16 provides the same by $\frac{2}{3}$.

page 23. Article 16 provides that alterations may be made by a given number of the legislature.

Nothing of it —

page 25. There is also in the articles, a provision respecting the attendance of members of both Houses—the penalties under which their attendance is required are such as to insure it &c.

It is provided in article 9 that all criminal offenses (except in cases of impeachment) shall be tried in the State where committed. The trials shall be open & public, and be by Jury. Nothing as to the rest—

article 6 provides for a seat of Govt. & a National University thereat—but no protection for authors is provided.

page 26. The next article provides for the privilege of the writ of Habeas Corpus—the trial by jury in all cases—criminal as well as civil—the freedom of the press, and the prevention of religious tests as qualifications for offices of trust &c.

page 26. There is also an authority to the National Legislature, permanently to fix the seat of the Genl. Govt., to secure to authors the exclusive right to their performances & discoveries, & to establish a federal university.

Not in the plan.

There are other articles of subordinate consideration.

In the plan of Mr. Pinkney

The plan according to his com-

removing from office, are fundamentals in a free Government; and ought to be fixed by the Constitution; if alterable by the Legislature, the Government might become the creator of the Constitution, of which it is itself but the creature: and if the large states could be reconciled to an augmentation of power in the Senate, constructed and endowed

as presented to M[r]. Adams & published in the Journal of the Convention.	ments in the pamphlet printed by Francis Childs in New York.
The House of Representatives to be chosen	No provision for electing the House of Representatives.
No Council of Revision.	A Council of Revision consisting of the Executive and principal officers of government. "This, I consider as an improvement in legislation, and have therefore incorporated it as a part of the system."
The President to be elected for years—	The Executive to be appointed septennially
not in the plan.	"—have a right to convene and prorogue the legislature upon special occasions, when they cannot agree as to the time of their adjournment, and appoint all officers except Judges and Foreign Ministers."
"and, except as to Ambassadors, other Ministers, and Judges of the Supreme Court, he shall nominate, and with *the consent of the Senate*, appoint all other Officers of the U. S."	
The 7th article gives the Senate the exclusive power to regulate	"The 9th article respecting the appointment of Federal Courts

as that branch of the Government is, a veto on removals from office would at all times be worse than inconvenient in its operation, and in party times might, by throwing the Executive machinery out of gear, produce a calamitous interregnum.

In making these remarks I am not unaware that

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the manner of deciding all disputes and controversies now subsisting, or which may arise, between the States, respecting jurisdiction or territory.

for deciding territorial controversies between different States, is the same with that in the Confederation; but this may with propriety be left to the Supreme Judicial."

Article 7. Senate alone to declare War, make treaties & appoint ministers & Judges of Sup. Court. To regulate the manner of deciding disputes, now subsisting, or which may arise between States respecting jurisdiction or territory.

The 7th article invests the U. S. with the compleat power of regulating trade & levying imposts & duties. (The regulation of commerce is given in the powers enumerated article 6th of plan.)

Article 8. The Executive power —H[is] E[xcellency] President U. S. for years & re-eligible. To give information to the Legislatures of the State of the Union & recommend measures to their consideration. To take care that the laws be executed. To commission all officers of the U. S. and except ministers & Judges of Sup. Court, nominate & *with consent of Senate* appoint all other officers—to receive ministers & may correspond with Ex. of different States. To grant pardon except in impeachments. To be commander in chief—to receive a fixed compensation—to

Article 8 like same in Confed. & gives power to exact postage for expense of office & for revenue.

Page 9. The executive should be appointed septennially, but his eligibility should not be limited. Not a branch of the Legislature further than as part of the Council of revision. His duties to attend to the execution of the Acts of Congress, by the several States; to correspond with them on the subject; to prepare and digest, in concert with the great Departments business that will come before the Legislature. To acquire a perfect knowledge of the situation of the

in a country wide and expanding as ours is, and in the anxiety to convey information to the door of every citizen, an unforeseen multiplication of offices may add a weight to the executive scale disturbing the equilibrium of the Government. I should therefore see with pleasure a guard against the evil by whatever regulations having that effect, may be within the scope of legislative power; or if necessary even by an amendment to the Constitu-

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take an oath—removable on impeachment by H. of D. and conviction in Supreme Court of bribery & corruption. The President of Senate to act as Pres. in case of death &ce and the Speaker of the H. of D. in case of death of Pres. of Senate.	Union, and to be charged with the business of the Home Dept^m^ To inspect the Departments. To consider their Heads as a Cabinet Council & to require their advice. To be Commander in Chief—to convene the legislature on special occasions & to appoint all officers but Judges & Foreign ministers—removable by impeachment—Salary to be fixed permanently by the Legislature.
Silent.	"to secure to authors the exclusive right to their performances and discoveries."
Powers of the Senate enumerated Article 7. viz. "to declare war, make treaties & appoint ambassadors and Judges of the Supreme Court."	Silent.
"Every bill, which shall have passed the Legislature, shall be presented to the President for his revision; if he approves it he shall sign it; but if he does not approve it, he shall return it with his objections &ce &ce.	The executive "is not a branch of the Legislature, farther than as a part of the Council of revision."

tion when a lucid interval of party excitement shall invite the experiment.

With thanks for your friendly communication and for the interest which you express in my health which is much broken by chronic complaints, added to my great age, I pray you to accept the assurance of my respect and good wishes.

The Legislature shall have power

To subdue a rebellion in any State, on application of its Legislature;

To provide such dockyards & arsenals, and erect such fortifications as may be necessary for the U. S. and to exercise exclusive jurisdiction therein;

To establish post & military roads;

To declare the law & punishment of counterfeiting coin;

To declare the punishment of treason, which shall consist only in levying war against the U. S., or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses.

The prohibition of any tax on exports——

These and other important powers are unnoticed in his remarks.

There is no numerical correspondence between the articles contained in the plan & those treated of in the pamphlet & the latter alludes to several more than are included in the former.

In Mr. Pinkney's letter to Mr. Adams, accompanying his plan he states that "very soon after the Convention met, I changed and avowed candidly the change of my opinion on giving the power to Congress to revise the State laws in certain cases, and in giving the exclusive power to the Senate to declare war, thinking it safer to refuse the first altogether, and to vest the latter in Congress."

TO CHARLES J. INGERSOLL. MAD. MSS.

MONTP^{R}., Dec^{r} 30th, 35.

DEAR SIR I thank you, tho' at a late day, for the pamphlet comprizing your address at New York.

The address is distinguished by some very important views of an important subject.

The absolutists on the "Let alone theory" overlook the two essential pre-requisites to a perfect freedom of external commerce. 1. That it be universal among nations. 2. That peace be perpetual among them.

A perfect freedom of international commerce, manifestly requires that it be *universal.* If not so,

In his pamphlet he concludes the 5th page of his argument in favor of the first power with these remarks—"In short, from their example [other republics] and from our own experience, there can be no truth more evident than this, that unless our Government is consolidated as far as is practicable, by retrenching the State authorities, and concentering as much force & vigor in the Union, as are adequate to its exigencies, we shall soon be a divided, and consequently an unhappy people. I shall ever consider the revision and negation of the State laws, as one great and leading step to this reform, and have therefore conceived it proper to bring it into view."

On the 23. August he moved a proposition to vest this power in the Legislature, provided ⅔ of each House assented.

He does not designate the depository of the power to declare war & consequently avows no change of opinion on that subject in the pamphlet, altho' it was printed after the adjournment of the Convention and is stated to embrace the "observations he delivered at different times in the course of their discussions."

J. M. has a copy of the pamphlet much mutilated by dampness; but one in complete preservation is bound up with "Select Tracts Vol. 2. belonging to the New York Historical Society, numbered 2687.

Title

Observations on the plan of Government submitted to the Federal Convention, in Philadelphia, on the 28th of May 1787. By M^{r} Charles Pinkney, Delegate from the State of South Carolina, delivered at different times in the course of their discussions."

New York:—Printed by Francis Childs.—*State Dept. Const. MSS.*

a Nation departing from the theory, might regulate the commerce of a Nation adhering to it, in subserviency to its own interest, and disadvantageously to the latter. In the case of navigation, so necessary under different aspects nothing is more clear than that a discrimination by one Nation in favor of its own vessels, without an equivalent discrimination on the side of another, must at once banish from the intercourse, the navigation of the latter. This was verified by our own ante-Constitution experience; as the remedy for it has been by the post-constitution experience.

But to a perfect freedom of commerce, universality is not the only condition; perpetual peace is another. War, so often occurring & so liable to occur, is a disturbing incident entering into the calculations by which a Nation ought to regulate its foreign commerce. It may well happen to a nation adhering strictly to the rule of buying cheap, that the rise of prices in Nations at war, may exceed the cost of a protective policy in time of peace; so that taking the two periods together, protection would be cheapness. On this point also an appeal may be made to our own experience. The Champions for the "Let alone policy" forget that theories are the offspring of the closet; exceptions & qualifications the lessons of experience.

SOVEREIGNTY.

MAD. MSS.
[1835]

It has hitherto been understood, that the supreme power, that is, the sovereignty of the people of the States, was in its nature divisible, and was in fact divided, according to the

Constitution of the U. States, between the States in their united and the States in their individual capacities that as the States, in their highest sov. char., were competent to surrender the whole sovereignty and form themselves into a consolidated State, so they might surrender a part & retain, as they have done, the other part, forming a mixed Gov$^{t.}$ with a division of its attributes as marked out in the Constitution.

Of late, another doctrine has occurred, which supposes that sovereignty is in its nature indivisible; that the societies denominated States, in forming the constitutional compact of the U. States, acted as indivisible sovereignties, and consequently, that the sovereignty of each remains as absolute and entire as it was then, or could be at any time.

This discord of opinions arises from a propensity in many to prefer the use of theoretical guides and technical language to the division and depositories of pol. power, as laid down in the const$^{l.}$ charter, which expressly assigns certain powers of Gov$^{t.}$ which are the attributes of sovereig$^{ty.}$ of the U. S., and even declares a practical supremacy of them over the powers reserved to the States; a supremacy essentially involving that of exposition as well as of execution; for a law could not be supreme in one depository of power if the final exposition of it belonged to another.

In settling the question between these rival claims of power, it is proper to keep in mind that all power in just & free Gov^{ts} is derived from compact, that when the parties to the compact are competent to make it, and when the compact creates a Gov$^{t.}$, and arms it not only with a moral power, but the physical means of executing it, it is immaterial by what name it is called. Its real character is to be decided by the compact itself; by the nature and extent of the powers it specifies, and the obligations imposed on the parties to it.

As a ground of compromise let then, the advocates of State rights acknowledge this rule of measuring the Federal share of sovereign power under the const. compact; and let it be conceded, on the other hand, that the States are not deprived

by it of that corporate existence and political unity which w^d. in the event of a dissolution, voluntary or violent, of the Const^n. replace them in the condition of separate communities, that being the condition in which they entered into the compact.

At the period of our Revol^n. it was supposed by some that it dissolved the social compact within the Colonies, and produced a state of nature which required a naturalization of those who had not participated in the revol^n. The question was brought before Cong. at its first session by D^r. Ramsay, who contested the election of W^m. Smith; who, though born in S. C., had been absent at the date of Independence. The decision was, that his birth in the Colony made him a member of the society in its new as well as its original state.

To go to the bottom of the subject, let us consult the Theory which contemplates a certain number of individuals as meeting and agreeing to form one political society, in order that the rights the safety & the interest of each may be under the safeguard of the whole.

The first supposition is, that each individual being previously independent of the others, the compact which is to make them one society must result from the free consent of *every* individual.

But as the objects in view could not be attained, if every measure conducive to them required the consent of every member of the society, the theory further supposes, either that it was a part of the original compact, that the will of the majority was to be deemed the will of the whole, or that this was a law of nature, resulting from the nature of political society itself, the offspring of the natural wants of man.

Whatever be the hypothesis of the origin of the *lex majoris partis*, it is evident that it operates as a plenary substitute of the will of the majority of the society for the will of the whole society; and that the sovereignty of the society as vested in & exercisable by the majority, may do anything that could be *rightfully* done by the unanimous concurrence of the members;

the reserved rights of individuals (of conscience for example) in becoming parties to the original compact being beyond the legitimate reach of sovereignty, wherever vested or however viewed.

The question then presents itself, how far the will of a majority of the society, by virtue of its identity with the will of the society, can divide, modify, or dispose of the sovereignty of the society; and quitting the theoretic guide, a more satisfactory one will perhaps be found—1, In what a majority of a society has done, and been universally regarded as having had a right to do; 2, What it is universally admitted that a majority by virtue of its sovereignty might do, if it chose to do.

1. The majority has not only naturalized, admitted into social compact again, but has divided the sovereignty of the society by actually dividing the society itself into distinct societies equally sovereign. Of this operation we have before us examples in the separation of Kentucky from Virginia and of Maine from Massachusetts; events w^ch. were never supposed to require a unanimous consent of the individuals concerned.

In the case of naturalization a new member is added to the social compact, not only without a unanimous consent of the members, but by a majority of the governing body, deriving its powers from a majority of the individual parties to the social compact.

2. As, in those cases just mentioned, one sovereignty was divided into two by dividing one State into two States; so it will not be denied that two States equally sovereign might be incorporated into one by the voluntary & joint act of majorities only in each. The Constitution of the U. S. has itself provided for such a contingency. And if two States, could thus incorporate themselves into one by a mutual surrender of the entire sovereignty of each; why might not a partial incorporation, by a partial surrender of sovereignty, be equally practicable if equally eligible. And if this could be done by two States, why not by twenty or more.

A division of sovereignty is in fact illustrated by the

exchange of sovereign rights often involved in Treaties between Independent Nations, and still more in the several confederacies which have existed, and particularly in that which preceded the present Constitution of the United States.

Certain it is that the constitutional compact of the U. S. has allotted the supreme power of Gov$^{t.}$ partly to the United States by special grants, partly to the individual States by general reservations; and if sovereignty be in its nature divisible, the true question to be decided is, whether the allotment has been made by the competent authority, and this question is answered by the fact that it was an act of the *majority* of the people in each State in their highest sovereign capacity, equipollent to a *unanimous* act of the people composing the State in that capacity.

It is so difficult to argue intelligibly concerning the compound system of Gov$^{t.}$ in the U. S. without admitting the divisibility of sovereignty, that the idea of sovereignty, as divided between the Union and the members composing the Union, forces itself into the view, and even into the language of those most strenuously contending for the unity & indivisibility of the *moral being* created by the social compact. "For security ag$^{st.}$ oppression from abroad we look to the *sovereign power* of the U. S. to be exerted according to the compact of union; for security ag$^{st.}$ oppression from within, or domestic oppression, we look to the sovereign power of the State. Now all sovereigns are equal; the sovereignty of the State is equal to that of the Union, for the sovereignty of each is but a *moral person*. That of the State and that of the Union are each a moral person, and in that respect precisely equal." These are the words in a speech which, more than any other, has analyzed & elaborated this particular subject, and they express the view of it finally taken by the speaker, notwithstanding the previous one in which he says, "the States, whilst the Constitution of the U. S. was forming, were not even shorn of *any* of their sovereign power by that process."

That a sovereignty would be lost & converted into a vassalage, if subjected to a foreign sovereignty over which it had no controul, and in which it had no participation, is clear & certain, but far otherwise is a surrender of portions of sovereignty by compacts among sovereign communities making the surrenders equal & reciprocal & of course giving to each as much as is taken from it.

Of all free Gov^{ts} compact is the basis & the essence, and it is fortunate that the powers of Gov$^{t.}$ supreme as well as subordinate can be so moulded & distributed, so compounded and divided by those on whom they are to operate as will be most suitable to their conditions, will best guard their freedom, and best provide for their safety.

NOTES ON NULLIFICATION.[1]

MAD. MSS. 1835. 6.

Altho' the Legislature of Virginia declared at a late session almost unanimously, that S. Carolina was not supported in her doctrine of nullification by the Resolutions of 1798, it appears that those resolutions are still appealed to as expressly or constructively favoring the doctrine.

That the doctrine of nullification may be clearly understood it must be taken as laid down in the Report of a special committee of the House of Representatives of S. C. in 1828. In that document it is asserted, that a single State has a constitutional right to arrest the execution of a law of the U. S. within its limits; that the arrest is to be presumed right and valid, and is to remain in force unless ¾ of the States, in a Convention, shall otherwise decide.

The forbidding aspect of a naked creed, according to which a process instituted by a single State is to terminate in the ascendancy of a minority of 7, over a majority of 17, has led

[1] These notes were written almost entirely in Madison's own hand and revised by him with the aid of Mrs. Madison and his brother-in-law, John C. Payne.

its partizans to disguise its deformity under the position that a single State may rightfully resist an unconstitutional and tyrannical law of the U. S., keeping out of view the essential distinction between a constitutional right and the natural and universal right of resisting intolerable oppression. But the true question is whether a single state has a constitutional right to annul or suspend the operation of a law of the U. S. within its limits, the State remaining a member of the Union, and admitting the Constitution to be in force.

With a like policy, the nullifiers pass over the state of things at the date of the proceedings of Vir[a]. and the particular doctrines and arguments to which they were opposed; without an attention to which the proceedings in this as in other cases may be insecure ag[st]. a perverted construction.

It must be remarked also that the champions of nullification, attach themselves exclusively to the 3. Resolution, averting their attention from the 7 Resolution which ought to be coupled with it, and from the Report also, which comments on both, & gives a full view of the object of the Legislature on the occasion.

Recurring to the epoch of the proceedings, the facts of the case are that Cong[s]. had passed certain acts, bearing the name of the alien and sedition laws, which Virg & some of the other States, regarded as not only dangerous in their tendency, but unconstitutional in their text; and as calling for a remedial interposition of the States. It was found also that not only was the constitutionality of the acts vindicated by a predominant party, but that the principle was asserted at the same time, that a sanction to the acts given by the supreme Judicial authority of the U. S. was a bar to any interposition whatever on the part of the States, even in the form of a legislative declaration that the acts in question were unconstitutional.

Under these circumstances, the subject was taken up by Virg[a]. in her resolutions, and pursued at the ensuing session of the Legislature in a comment explaining and justifying them; her main and immediate object, evidently being, to produce

a conviction everywhere, that the Constitution had been violated by the obnoxious acts and to procure a concurrence and co-operation of the other States in effectuating a repeal of the acts. She accordingly asserted and offered her proofs at great length, that the acts were unconstitutional. She asserted moreover & offered her proofs that the States had a right in such cases, to interpose, first in their constituent character to which the gov^t. of the U. S. was responsible, and otherwise as specially provided by the Constitution; and further, that the States, in their capacity of parties to and creators of the Constitution, had an ulterior right to interpose, notwithstanding any decision of a constituted authority; which, however it might be the *last resort* under the forms of the Constitution in cases falling within the scope of its functions, could not preclude an interposition of the States as the parties which made the Constitution and, as such, possessed an authority paramount to it.

In this view of the subject there is nothing which excludes a natural right in the States individually, more than in any portion of an individual State, suffering under palpable and insupportable wrongs, from seeking relief by resistance and revolution.

But it follows, from no view of the subject, that a nullification of a law of the U. S. can as is now contended, belong rightfully to a single State, as one of the parties to the Constitution; the State not ceasing to avow its adherence to the Constitution. A plainer contradiction in terms, or a more fatal inlet to anarchy, cannot be imagined

And what is the text in the proceedings of Virginia which this spurious doctrine of nullification claims for its parentage? It is found in the 3^d. of the Resolutions of –98, which is in the following words.

"That in case of a deliberate, a palpable & dangerous exercise of powers not granted by the [constitutional] compact, the *States* who are parties thereto have a right and are in duty bound to interpose for arresting the progress of the evil, &

for maintaining within their respective limits, the authorities rights & liberties appertaining to them."

Now is there anything here from which a *single* State can infer a right to arrest or annul an act of the General Govt which it may deem unconstitutional? So far from it, that the obvious & proper inference precludes such a right on the part of a single State; *plural* number being used in every application of the term.

In the next place, the course & scope of the reasoning requires that by the rightful authority to interpose in the cases & for the purposes referred to, was meant, not the authority of the States *singly* & *separately*, but their authority as the *parties* to the Constn, the authority which, in fact, made the Constitution; the authority which being paramount to the Constitution was paramount to the authorities constituted by it, to the Judiciary as well as the other authorities. The resolution derives the asserted right of interposition for arresting the progress of usurpations by the Federal Govt from the fact, that its powers were limited to the grant made by the States; a grant certainly not made by a *single* party to the grant, but by the *parties* to the compact containing the grant. The mode of their interposition, in extraordinary cases, is left by the Resolution to the parties themselves; as the mode of interposition lies with the parties to other Constitutions, in the event of usurpations of power not remediable, under the forms and by the means provided by the Constitution. If it be asked why a claim by a single party to the constitutional compact, to arrest a law, deemed by it a breach of the compact, was not expressly guarded agst the simple answer is sufficient that a pretension so novel, so anomalous & so anarchical, was not & could not be anticipated.

In the third place, the nullifying claim for a single State is probably irreconcilable with *the effect* contemplated by the interposition claimed by the Resolution for the parties to the Constitution namely that of "maintaining within the respective limits of the States the authorities rights & liberties

appertaining to them." Nothing can be more clear than that these auth^s. &c., &c., of the States, in other words, the authority & laws of the U. S. must be the same in all; or that this cannot continue to be the case, if there be a right in each to annul or suspend within itself the operation of the laws & authority of the whole. There cannot be different laws in different states on subjects within the compact without subverting its fundamental principles, and rendering it as abortive in practice as it would be incongruous in theory. A concurrence & co-operation of the States in favor of each, would have the effect of preserving the necessary uniformity in all, which the Constitution so carefully & so specifically provided for in cases where the rule might be in most danger of being violated. Thus the citizens of every State are to enjoy reciprocally the privileges of citizens in every other State. Direct taxes are to be apportioned on all, according to a fixed rule. Indirect taxes are to be the same in all the States. The duties on imports are to be uniform: No preference is to be given to the ports of one State over those of another. Can it be believed, that with these provisions of the Const^n. illustrating its vital principles fully in view of the Legislature of Virginia, that its members could in the Resolution quoted, intend to countenance a right in a single State to distinguish itself from its co-States, by avoiding the burdens, or restrictions borne by them; or indirectly giving the law to them.

These startling consequences from the nullifying doctrine have driven its partizans to the extravagant presumption that no State would ever be so unreasonable, unjust & impolitic as to avail itself of its right in any case not so palpably just and fair as to ensure a concurrence of the others, or at least the requisite proportion of them.

Omitting the obvious remark that in such a case the law would never have been passed or immediately repealed; and the surprize that such a defence of the nullifying right should come from S. C. in the teeth & at the time of her own

example, the presumption of such a forbearance in each of the States, or such a pliability in all, among 20 or 30 independent sovereignties, must be regarded as a mockery by those who reflect for a moment on the human character, or consult the lessons of experience, not the experience of other countries & times, but that among ourselves; and not only under the former defective Confederation, but since the improved system took place of it. Examples of differences, persevering differences among the States on the constitutionality of Federal acts, will readily occur to every one; and which would, e'er this, have defaced and demolished the Union, had the nullifying claim of S. Carolina been indiscriminately exercisable. In some of the States, the carriage-tax would have been collected, in others unpaid. In some, the tariff on imports would be collected; in others, openly resisted. In some, lighthouses w^d. be established; in others denounced. In some States there might be war with a foreign power; in others, peace and commerce. Finally, the appellate authority of the Supreme Court of the U. S. would give effect to the Federal laws in some States, whilst in others they would be rendered nullities by the State Judiciaries. In a word, the nullifying claims if reduced to practice, instead of being the conservative principle of the Constitution, would necessarily, and it may be said obviously, be a deadly poison.

Thus, from the 3^d. resol^n. itself, whether regard be had to the employment of the term *States* in the plural number, the argumentative use of it, or to the object namely the "maintaining the authority & rights of each, which must be the same in all as in each, it is manifest that the adequate interposition to which it relates, must be not a single, but a concurrent interposition.

If we pass from the 3^d. to the 7^th. Resolution, which, tho' it repeats and re-enforces the 3^d. and which is always skipped over by the nullifying commentators, the fallacy of their claim will at once be seen. The resolution is in the following words. ["That the good people of the common-

wealth having ever felt and continuing to feel the most sincere affection to their brethren of the other states, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each for co-operating with this state in maintaining unimpaired the authorities, rights, and liberties reserved in the states respectively or to the people."[1]] Here it distinctly appears, as in the 3$^{d.}$ reol$^{n.}$ that the course contemplated by the Legislature, "for maintaining the authorities, rights, & liberties reserved to the States respectively," was not a *solitary* or *separate* interposition, but a *co-operation* in the means necessary & proper for the purpose.

If a further elucidation of the view of the Legislature could be needed, it happens to be found in its recorded proceedings. In the 7$^{th.}$ Resolution as originally proposed, the term "*unconstitutional*," was followed by null void, &c. These added words being considered by some as giving pretext for some disorganizing misconstruction, were unanimously stricken out, or rather withdrawn by the mover of the Resolutions.

An attempt has been made, by ascribing to the words stricken out, a nullifying signification, to fix on the reputed draftsman of the Resolution the character of a nullifier. Could this have been effected, it would only have vindicated the Legislature the more effectually from the imputation of favoring the doctrine of S. Carolina. The unanimous erasure of nullifying expressions was a protest by the H. of Delegates, in the most emphatic form against it.

But let us turn to the "Report," which explained and

[1] Madison left the quotation to be filled in.

vindicated the Resolutions; and observe the light in which it placed first the third and then the 7th.[1]

It must be recollected that this Document proceeded from Representatives chosen by the people some months after the Resolutions had been before them, with a longer period for manifesting their sentiments before the Report was adopted; and without any evidence of disapprobation in the Constituent Body. On the contrary, it is known to have been recd. by the Republican party, a decided majority of the people, with the most entire approbation. The Report therefore must be regarded as the most authoritative evidence of the meaning attached by the State to the Resolutions. This consideration makes it the more extraordinary, and let it be added the more inexcusable, in those, who in their zeal to extract a particular meaning from a particular resolution, not only shut their eyes to another Resolution, but to an authentic exposition of both.

And what is the comment of the Report on that particular resolution?, namely, the 3d.

In the first place, it conforms to the resolution in using the term which expresses the interposing authy. of the States, in the *plural* number *States*, not in the singular number *State*. It is indeed impossible not to perceive that the entire current & complexion of the observations explaining & vindicating the resolns. imply necessarily, that by the interposition of the States for arresting the evil of usurpation, was meant a concurring authy. not that of a *single* state; whilst the collective meaning of the term, gives consistency & effect to the reasoning & the object.

But besides this general evidence that the Report in the invariable use of the plural term *States*, withheld from a single State the right expressed in the Resoln. a still more precise and decisive inference, to the same effect, is afforded by several passages in the document.

Thus the report observes "The States then being the

[1] *Ante*, Vol. VI., p. 341.

parties to the const[l]. compact, and in their highest sovereign capacity, it follows of necessity, that there can be no tribunal above *their* auth[y]. to decide in the *last* resort, whether the compact made by them be violated; and, consequently that as the parties to it, they must *themselves* decide in the last resort such questions as may be of sufficient magnitude to require their interposition."

Now apart from the palpable insufficiency of an interposition by a single State to effect the declared object of the interposition namely, to maintain authorities & rights which must be the same in all the States, it is not true that there would be no tribunal above the authority of a state as a single party; the aggregate authority of the parties being a tribunal above it to decide in the *last* resort.

Again the language of the Report is, "If the deliberate exercise of dangerous powers palpably withheld by the Constitution could not justify the parties to it in interposing even so far as to arrest the progress of the evil, & thereby preserve the Constitu[n]. itself, as well as to provide for the safety of the parties to it, there w[d]. be an end to all relief from usurped power"—Apply here the interposing power of a single State, and it would not be true that there w[d]. be no relief from usurped power. A sure & adequate relief would exist in the interposition of the *States*, as the *co-parties* to the Constitution, with a power paramount to the Const[n]. itself.

It has been said that the right of interposition asserted for the states by the proceedings of Virginia could not be meant a right for them in their collective character of parties to and creators of the Constitution, because that was a right by none denied. But as a simple truth or truism, its assertion might not be out of place when applied as in the resolution, especially in an avowed recurrence to fundamental principles, as in duty called for by the occasion. What is a portion of the Declaration of Independence but a series of simple and undeniable truths or truisms? what but the same composed a great part of the Declarations of Rights prefixed to the state con-

stitutions? It appears, however, from the report itself, which explains the resolutions, that the last *resort* claimed for the Supreme Court of the United States, in the case of the alien and sedition laws, was understood to require a recurrence to the ulterior resort in the authority from which that of the court was derived. "But, (continues the Report) it is objected[1] that the judicial authority is to be regarded as the sole expositor of the Const^n. in the last resort."

In answering this objection the Report observes, "that however true it may be that the judicial Dep^t., in all questions submitted to it by the forms of the Constn. to decide in the last resort, this resort must necessarily *not* be the last—in relation to the rights of the parties to the const^l. compact from which the Judicial as well as the other Departments hold their *delegated trusts*. On any other hypothesis, the Delegation of judicial power w^d. annul the auth^y. delegating it, and the concurrence of this Dep^t. with the others in usurped power, might subvert for ever, and beyond the possible reach of any rightful remedy, the very Constit^n. which all were instituted to preserve." Again observes the report, "The truth declared in the resolution being established, the expediency of making the declaration at the present day may safely be left to the temperate consideration and candid judgment of the American public. It will be remembered that a frequent recurrence to fundamental principles is solemnly enjoined by most of the State constitutions, and particularly by our own, as a necessary safeguard against the danger of degeneracy, to which republics are liable as well as other governments, though in a less degree than others. And a fair comparison of the political doctrines, not unfrequent at the present day, with those which characterized the epoch of our revolution, and which form the basis of our

[1] There is a direct proof that the authority of the Supreme Court of the U. S. was understood by the Legislature of Virginia to have been an asserted bar to an interposition by the states ag^st the al & sed laws.—*Madison's Note.*

republican constitutions, will best determine whether the declaratory recurrence here made to those principles ought to be viewed as unreasonable and improper, or as a vigilant discharge of an important duty. The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind; and at no time, perhaps, more necessary than at present."

Who can avoid seeing the necessity of understanding by the "*parties*" to the const^l. compact, the authority, which made the compact and from which all the Dep^ts. held their delegated trusts. These trusts were certainly not delegated by a *single* party. By regarding the term *parties* in its plural, not individual meaning, the answer to the objection is clear and satisfactory. Take the term as meaning *a party*, and not *the parties*, and there is neither truth nor argument in the answer. But further, on the hypothesis, that the rights of the *parties* meant the rights of *a party*, it w^d. not be true as affirmed by the Report, that "the Delegation of Jud^l. power w^d. annul the auth^y. delegating it, and that the concurrence of this Dep^t. with others in usurped power might subvert for ever, & beyond the reach of any rightful remedy, the very Constitution w^ch. all were instituted to preserve." However deficient a remedial right in a *single State* might be to preserve the Const^n. against usurped power an ultimate and adequate remedy w^d. always exist in the rights of the *parties* to the Const^n. in whose hands the Const^n. is at all times but clay in the hands of the potter, and who could apply a remedy by explain^g. amend^g., or remak^g. it, as the one or the other mode might be the most proper remedy.

Such being the comment of the Report on the 3^d. Resolution, it fully demonstrates the meaning attached to it by Virginia when passing it, and rescues it from the nullifying misconstruction into which the Resolution has been distorted.

Let it next be seen, how far the comment of the Rep^t. on the 7^th. Resol^n. above inserted accords with that on the 3^d.;

and that this may the more conveniently be scanned by every eye, the comment is subjoined at full length.

["The fairness and regularity of the course of proceedings here pursued have not protected it against objections even from sources too respectable to be disregarded.

"It has been said that it belongs to the judiciary of the United States, and not to the state legislatures, to declare the meaning of the federal Constitution.

"But a declaration that proceedings of the federal government are not warranted by the Constitution, is a novelty neither among the citizens nor among the legislatures of the states; are not the citizens or the Legislature of Virginia singular in the example of it.

"Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the federal government, or whether made before or after judicial decisions thereon, be deemed, in any point of view, an assumption of the office of the judge. The declarations in such cases are expressions of opinions, unaccompanied with any other effect than what they may produce on opinion by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expressions of the general will; possibly to a change in the opinion of the judiciary; the latter enforces the general will, while that will and that opinion continue unchanged.

"And if there be no impropriety in declaring the unconstitutionality of proceedings in the federal government, where can be the impropriety of communicating the declaration to other states, and inviting their concurrence in a like declaration? What is allowable for one must be allowable for all; and a free communication among the states, where the Constitution imposes no restraint, is as allowable among the state governments as among other public bodies or private citizens. This consideration derives a weight that cannot be denied to it, from the relation of the state legislatures to the

federal Legislature, as the immediate constituents of one of its branches.

"The legislatures of the states have a right also to originate amendments to the Constitution, by a concurrence of two thirds of the whole number, in applications to Congress for the purpose. When new states are to be formed by a junction of two or more states or parts of states, the legislatures of the states concerned are, as well as Congress, to concur in the measure. The states have a right also to enter into agreements or compacts, with the consent of Congress. In all such cases, a communication among them results from the object which is common to them.

"It is lastly to be seen whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other states for co-operating with Virginia in maintaining the rights reserved to the states or to the people, be in any degree liable to the objections which have been raised against it.

"If it be liable to objection, it must be because either the object or the means are objectionable.

"The object being to maintain what the Constitution has ordered, is in itself a laudable object.

"The means are expressed in the terms 'the necessary and proper measures.' A proper object was to be pursued by means both necessary and proper.

"To find an objection, then, it must be shown that some meaning was annexed to these general terms which was not proper; and, for this purpose, either that the means used by the General Assembly were an example of improper means, or that there were no proper means to which the term could refer.

"In the example given by the state, of declaring the alien and sedition acts to be unconstitutional, and of communicating the declaration to the other states, no trace of improper means has appeared. And if the other states had concurred in making a like declaration, supported, too, by the numerous applications flowing immediately from the people, it can

scarcely be doubted that these simple means would have been as sufficient as they are unexceptionable.

"It is no less certain that other means might have been employed which are strictly within the limits of the Constitution. The legislatures of the states might have made a direct representation to Congress, with a view to obtain a rescinding of the two offensive acts; or they might have represented to their respective senators in Congress their wish that two thirds thereof would propose an explanatory amendment to the Constitution; or two thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a convention for the same object.

"These several means, though not equally eligible in themselves, nor probably to the states, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other states a choice among the farther means that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

"These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is one other, however, which may be of too much importance not to be added. It cannot be forgotten, that among the arguments addressed to those who apprehended danger to liberty from the establishment of the general government over so great a country, the appeal was emphatically made to the intermediate existence of the state governments between the people and that government, to the vigilance with which they would descry the first symptoms of usurpation, and to the promptitude with which they would sound the alarm to the public. This argument was probably not without its effect; and if it was a proper one then to recommend the establishment of the Constitution, it must be a proper one now to assist in its interpretation.

"The only part of the two concluding resolutions that remains to be noticed, is the repetition in the first of that warm affection to the Union and its members, and of that scrupulous fidelity to the Constitution, which have been invariably felt by the people of this state. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the General Assembly cannot descend into a discussion of it. Those who have listened to the suggestion can only be left to their own recollection of the part which this state has borne in the establishment of our national independence, in the establishment of our national Constitution, and in maintaining under it the authority and laws of the Union, without a single exception of internal resistance or commotion. By recurring to these facts, they will be able to convince themselves that the representations of the people of Virginia must be above the necessity of opposing any other shield to attacks on their national patriotism than their own consciousness and the justice of an enlightened public, who will perceive, in the resolutions themselves, the strongest evidence of attachment both to the Constitution and to the Union, since it is only by maintaining the different governments and departments within their respective limits that the blessings of either can be perpetuated."]

Here is certainly not a shadow of countenance to the doctrine of nullification. Under every aspect, it enforces the arguments and authority agst such an apocryphal version of the text.

From this view of the subject, those who will duly attend to the tenour of the proceedings of Virg^{a} and to the circumstances of the period when they took place will concur in the fairness of disclaiming the inference from the undeniableness of a truth, that it could not be the truth meant to be asserted in the Resol^{n} The employment of the truth asserted, and

the reasons for it, are too striking to be denied or misunderstood.

More than this, the remark is obvious, that those who resolve the nullifying claim into the *natural* right to resist intolerable oppression, are precluded from inferring that to be the right meant by the Resol$^{n.}$, since that is as little denied, as the paramountship of the auth$^{y.}$, creating a Const$^{n.}$ over an auth$^{y.}$ derived from it.

The true question therefore is whether there be a *constitutional* right in a single state to nullify a law of the U. S. We have seen the absurdity of such a claim in its naked and suicidal form. Let us turn to it as modified by S. C., into a right in every State to resist within itself, the execution of a Federal law deemed by it to be unconstitutional; and to demand a Convention of the States to decide the question of constitutionality, the annulment of the law to continue in the mean time, and to be permanent, unless ¾ of the states concur in over-ruling the annulment.

Thus, during the temporary nullification of the law, the results would be the same from those proceeding from an unqualified nullification, and the result of a convention might be, that 7 out of the 24 states, might make the temporary results permanent. It follows, that any State which could obtain the concurrence of six others, might abrogate any law of the U. S constructively whatever, and give to the Constitution any shape they please, in opposition to the construction and will of the other seventeen, each of the 17 having an equal right & authority with each of the 7. Every feature in the Constitution, might thus be successively changed; and after a scene of unexampled confusion & distraction, what had been unanimously agreed to as a whole, would not as a whole be agreed to by a single party. The amount of this modified right of nullification is, that a single State may arrest the operation of a law of the United States, and institute a process which is to terminate in the ascendency of a minority over a large majority, in a Republican System, the characteristic

rule of which is that the major will is the ruling will. And this newfangled theory is attempted to be fathered on Mr. Jefferson the apostle of republicanism, and whose own words declare that "acquiescence in the decision of the majority is the vital principle of it." [See his Inaugural Address.]

Well might Virginia declare, as her Legislature did by a resolution of 1833 "that the resolutions of 98–99, gave no support to the nullifying doctrine of South Carolina. And well may the friends of Mr. J. disclaim any sanction to it or to any *constitutional* right of nullification from his opinions. His memory is fortunately rescued from such imputations, by the very Document procured from his files and so triumphantly appealed to by the nullifying partisans of every description. In this Document, the remedial right of nullification is expressly called a *natural* right, and, consequently, not a right derived from the Constitution, but from abuses or usurpations, releasing the parties to it from their obligation.[1]

[1] No example of the inconsistency of party zeal can be greater than is seen in the value allowed to Mr. Jefferson's authority by the nullifying party; while they disregard his repeated assertions of the Federal authority, even under the articles of confederation, to stop the commerce of a refractory State, while they abhor his opinions & propositions on the subject of slavery & overlook his declaration, that in a republick, it is a vital principle that the minority must yield to the majority—they seize on an expression of Mr. Jefferson that nullification is the rightful remedy, as the Shiboleth of their party, & almost a sanctification of their cause. But in *addition* to their inconsistency, their zeal is guilty of the subterfuge of droping a part of the language of Mr. Jefferson, which shews his meaning to be entirely at variance with the nullifying construction. His words in the document appealed to as the infallible test of his opinions are: [. . . "but, when powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every state has a natural right in cases not within the compact (*casus non fœderis*,) to nullify" etc.]

. . . . . .

Thus the right of nullification meant by Mr. Jefferson is the natural right, which all admit to be a remedy against insupportable oppression. It cannot be supposed for a moment that Mr. Jefferson would not revolt at the doctrine of South Carolina, that a single state could constitutionally resist a law of the Union while remaining within it, and that with

It is said that in several instances the authority & laws of the U. S. have been successfully nullified by the particular States. This may have occurred possibly in urgent cases, and in confidence that it would not be at variance with the construction of the Fed^{l} Gov^{t} or in cases where, operating within the Nullifying State alone it might be connived at as a lesser evil than a resort to force; or in cases not falling within the Fed^{l} jurisdiction; or finally in cases, deemed by the States, subversive of their *essential rights*, and justified therefore, by the *natural* right of self-preservation. Be all this as it may, examples of nullification, tho' passing off with^{t} any immediate disturbance of the public order, are to be deplored, as weaken^{g} the com̃on Gov^{t} and as undermining the Union. One thing seems to be certain, that the States which have exposed themselves to the charge of nullification, have, with the exception of S. C., disclaimed it as a *constitutional* right, and have moreover protested agst it as *modified* by the process of South Carolina.

The conduct of Pen^{a} and the opinions of Judge M^{c}Kean & Tilgman have been particularly dwelt on by the nullifiers. But the final acquiescence of the state in the auth^{y} of the Fed^{l} Judiciary transfers their auth^{y} to the other scale, and it is believed that the opinions of the two judges, have been superseded by those of their brethren, which have been since & at the present time are, opposed to them.[1]

Attempts have been made to shew that the resolutions of Virginia contemplated a forcible resistance to the alien &

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the accession of a small minority of the others, overrule the will of a great majority of the whole, & constitutionally annul the law everywhere.

If the right of nullification meant by him had not been thus guarded agst a perversion of it, let him be his own interpreter in his letter to M^{r}. Giles in December 1826 in which he makes the rightful remedy of a state in an extreme case to be a separation from the Union, not a resistance to its authority while remaining in it. The authority of Mr. Jefferson, therefore, belongs not, but is directly opposed to, the nullifying party who have so unwarrantably availed themselves of it. —*Madison's Note.*

[1] The precedents for the nullification doctrine are given in *The Genuine Book of Nullification*, Charleston, 1831.

sed[t] laws and as evidence of it, the laws relating to the armory, and a Hab[s] corpus for the protection of members of her Legislature, have been brought into view. It happens however, as has been ascertained by the recorded dates that the first of these laws was enacted prior to the al. & sed. laws. As to the last, it appears that it was a general law, providing for other emergencies as well as federal arrests and its applicability never tested by any occurrence under the al. & sed[n] laws. The law did not necessarily preclude an acquiescence in the supervising decision of the Fed[l] Jud[y] sh[d] that not sustain the Hab[s] corp[s] which it might be calculated would be sustained. And all must agree, that cases might arise, of such violations of the security & privileges of representatives of the people, as would justify the states in a resort to the *natural* law of self-preservation. The extent of the privileges of the fed[l] & State representatives of the people, ag[st] criminal charges by the 2 authorities reciprocally, involves delicate questions which it may be better to leave for those who are to decide on them, than unnecessarily to discuss them in advance. The moderate views of V[a] on the critical occasion of the al. & sed. laws, are illustrated by the terms of the 7[th] Resol. with an eye to which the 3[d] Resol. ought always to be expounded, by the unanimous erasure of the terms "null void" &c., from the 7[th] art. as it stood; and by the condemnation & imprisonment of Callender under the law, without the slightest opposition on the part of the state. So far was the State from countenancing the nullifying doctrine, that the occasion was viewed as a proper one for exemplifying its devotion to public order, and acquiescence in laws which it deemed unconstitutional, whilst those laws were not constitutionally repealed. The language of the Gov[r] in a letter to a friend, will best attest the principles & feelings which dictated the course pursued on the occasion.[1]

[1] Madison's note says: Extract of a letter from Monroe to Madison, dated Albemarle, May 15, 1800: "Besides, I think there is cause to suspect the sedition law will be carried into effect in this state at the

It is sometimes asked in what mode the States could interpose in their collective character as parties to the Constitution agst usurped power. It was not necessary for the object & reasoning of the resol^{ns} & report, that the mode should be pointed out. It was sufficient to shew that the auth$^{y.}$ to interpose existed, and was a resort beyond that of the Supreme Court of the U. S. or any auth$^{y.}$ derived from the Constit^{n}. The auth$^{y.}$ being plenary, the mode was of its own choice, and it is obvious, that, if employed by the States as coparties to and creators of the Const^{n} it might either so explain the Const^{n} or so amend it as to provide a more satisfactory mode within the Const^{n} itself for guarding it agst constructive or other violations.

It remains however for the nullifying expositors to specify the right & mode of interposition which the resolution meant to assign to the States *individually*. They cannot say it was a natural right to resist intolerable oppression; for that was a right not less admitted by all than the collective right of the States as parties to the Const. the nondenial of

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approaching federal court, and I ought to be there [Richmond] to aid in preventing trouble. A camp is formed of about 400 men at Warwick, four miles below Richmond, and no motive for it assigned except to proceed to Harper's Ferry, to sow cabbage-seed. But the gardening season is passing, and this camp remains. I think it possible an idea may be entertained of opposition, and by means whereof the fair prospect of the republican party may be overcast. But in this they are deceived, as certain characters in Richmond and some neighbouring counties are already warned of their danger, so that an attempt to excite a hotwater insurrection will fail."

Extract from another letter from J. Monroe to J. M., dated Richmond, June 4, 1800: "The conduct of the people on this occasion was exemplary, and does them the highest honour. They seemed aware the crisis demanded of them a proof of their respect for law and order, and resolved to show they were equal to it. I am satisfied a different conduct was expected from them, for everything that could was done to provoke it. It only remains that this business be closed on the part of the people, as it has been so far acted; that the judge, after finishing his career, go off in peace, without experiencing the slightest insult from any one; and that this will be the case I have no doubt."

which was urged as a proof that it could not be meant by the Resol[n].

They cannot say that the right meant was a Constit[l] right to resist the constitutional auth[y]. for that is a construction in terms, as much as a legal right to resist a law.

They can find no middle ground, between a natural and a constitutional right, on which a right of nullifying interposition can be placed; and it is curious to observe the awkwardness of the attempt, by the most ingenious advocates [Upshur and Berrian].

They will not rest the claim as modified by S. C. for that has scarce an advocate out of the State, and owes the remnant of its popularity there to the disguise under which it is now kept alive; some of the leaders of the party admitting its indefensibility, in its naked shape.

The result is, that the nullifiers, instead of proving that the Resol[n] meant nullification, would prove that it was altogether without meaning.

It appears from this Comment, that the right asserted and exercised by the Legislature, to *declare* an act of Cong[s]. unconstitutional had been denied by the Defenders of the alien & sedition acts as an interference with the Judicial authority; and, consequently, that the reasonings employed by the Legislature, were called for by the doctrines and inferences drawn from that authority, and were not an idle display of what no one denied.

It appears still farther, that the efficacious interposition contemplated by the Legislature; was a concurring and co-operating interposition of the States, not that of a single State.

It appears that the Legislature expressly disclaimed the idea that a declaration of a State, that a law of the U. S. was unconstitutional, had the effect of *annulling* the law.

It appears that the object to be attained by the invited cooperation with Virginia was, as expressed in the 3[d]. & 7[th]. Resol. to maintain within the several States their respective

auth^{s}. rights, & liberties, which could not be constitutionally different in different States, nor inconsistent with a sameness in the authy. & laws of the U. S. in all & in each.

It appears that the means contemplated by the Legislature for attaining the object, were measures recognised & designated by the Constitution itself.[1]

[1] The following note is marked by Madison as intended to be inserted at this point. Most of it appears, however, embodied in other parts of the essay:

"The predominant feelings & views of Virginia, in her Resolutions of 98 & the comment on them in the Report of 99 may be seen in the instructions to her members in Cong^{s}. passed at the same session with the Report. These instructions, instead of squinting at any such doctrine as that of nullification, are limited to efforts, on the part of the members 1. to procure a reduction of the army 2. to prevent or stop the premature augmentation of the navy, 3. to oppose the principle lately advanced, that the common law of England is in force under the Gov^{t} of the U. S., excepting the particular parts &c [as excepted in the Report] 4th Repeal of the alien & sed^{n} acts.

"Again as a final ans^{wr} to the question asked with a triumphant tone, whether the solemnity of the proceedings of Virg^{a}. on that occasion, c^{d}. be called for or wasted, in mere declarations and protests, rights which no one desired; and whether the nullifying right alone must not therefore have been the object of them? it may be observed that sufficient answer both to the fact and the inference had been already given in the appeal to language held in the answers of the several states, denying the right of a state to protest agst the Constitutionality of acts of Cong^{s} and to the solemnity of the concluding paragraph of the Report renewing the protest agst the alien & sedition acts. The fact that the right of a state Legisl. to protest, was positively denied is authenticated by a large and respectable portion of the House of Delegates in their votes as recorded in the Journal of the House.

"A motion offered at the date of the Report affirms 'that protests, made by the Legislature of this or of any other State, ag^{ts} particular acts of Cong^{s}. as unconstitutional, accompanied with invitations to other States to join in such protests are improper & unauthorized assumptions of power, not permitted or intended to be permitted to the State Legislatures. And inasmuch as *correspondent sentiments with the present have been expressed by those of our Sister States who have acted on the Resolutions aforesaid* [of 1798] Resolved therefore that

Lastly, it may be remarked that the concurring measures of the states, without any nullifying interposition whatever did attain the contemplated object; a triumph over the obnoxious acts, and an apparent abandonment of them for ever.

It has been said or insinuated that the proceedings of Virg[a]. in 98–99, had not the influence ascribed to them in bringing about that result. Whether the influence was or was not such as has been claimed for them, is a question that does not affect the meaning & intention of the proceedings. But as a question of fact, the decision may be safely left to the recollection of those who were co-temporary with the crisis, and to the researches of those who were not, taking for their guides the reception given to the proceedings by the Repubn. party every where, and the pains taken by it, in multiplying republications of them in newspapers and in other forms.

What the effect might have been if Virga. had remained patient & silent, and still more if she had sided with S. Carolina, in favoring the alien & sedition acts. can be but a matter of conjecture.

What would have been thought of her if she had recommended the nullifying project of S. C. may be estimated by the reception given to it under all the factitious gloss, and in the midst of the peculiar excitement of which advantage has been taken by the partizans of that anomalous conceit.

It has been sufficiently shown, from the language of the Report, as has been seen, that the right in the States to interpose declarations & protests, ag[st]. unconstitutional acts of Congress, had been denied; and that the reasoning in the Resolutions was called for by that denial. But the triumphant

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the present Gen[l]. Assembly convinced of the impropriety of the Resolutions of the last assembly, deem it inexpedient farther to act on the said Resolutions.'

"On this Resolution, the votes according to the yeas & nays were 57 of the former and 98 of the latter.

"Here then within the House of Delegates itself, more than ⅓ of the whole number denied & protested ag[st] the right of protest, which the nullifying critics have alleged was denied by nobody."—*Mad. MSS.*

tone, with which it is affirmed & reiterated that the resolutions, must have been directed ag$^{st.}$ what no one denied, unless they were meant to assert the right of a single State to arrest and annul acts of the federal Legislature, makes it proper to adduce a proof of the fact that the declaratory right was denied, which, if it does not silence the advocate of nullification, must render every candid ear indignant at the repetition of the untruth.

The proof is found in the recorded votes of a large and respectable portion of the House of Delegates, at the time of passing the report.

A motion [see the Journal] offered at the closing scene affirms "that protests made by the Legislature of this or any other State agst particular acts of Cong^{s} as unconstitutional accompanied with invitations to other States, to join in such protests, are improper & unauthorized assumptions of power not permitted, nor intended to be permitted to the State Legislatures. And inasmuch as *correspondent sentiments with the present*, have been expressed by those of our sister States who have acted on the Resolutions [of 1798], Resolved therefore that the present General Assembly convinced of the impropriety of the Resolutions of the last Assembly, deem it inexpedient farther to act on the said Resolutions."

On this Resolution, the votes, according to the yeas & nays were 57, of the former, 98 of the latter.

Here then within the H. of Delegates itself more than $\frac{1}{3}$ of the whole number *denied* the right of the State Legislature to proceed by acts merely declaratory agst the constitutionality of acts of Cong^{s} and affirmed moreover that the states who had acted on the Resol$^{s.}$ of V$^{a.}$ entertained the same sentiments. It is remarkable that the minority, who denied the right of the legislatures even to protest, admitted the right of the *states* in the capacity of *parties*, without claiming it for a single state.

With this testimony under the eye it may surely be expected that it will never again be said that such a right had never

been denied, nor the pretext again resorted to that without such a denial, the nullifying doctrine alone could satisfy the true meaning of the Legislature. [See the instructions to the members of Congress passed at the same session, which do not squint at the nullifying idea; see also the protest of the minority in the Virga. Legisla^re. and the Report of the Com^ee. of Cong^s. on the proceedings of Virginia.]

It has been asked whether every right has not its remedy, and what other remedy exists under the Gov^t. of the U. S. ag^st. usurpations of power, but a right in the States individually to annul and resist them.

The plain answer is, that the remedy is the same under the government of the United States as under all other Gov^ts. established & organized on free principles. The first remedy is in the checks provided among the constituted authorities; that failing the next is in the influence of the Ballot-boxes & Hustings; that again failing, the appeal lies to the power that made the Constitution, and can explain, amend, or remake it. Should this resort also fail, and the power usurped be sustained in its oppressive exercise on a minority by a majority, the final course to be pursued by the minority, must be a subject of calculation, in which the degree of oppression, the means of resistance, the consequences of its failure, and consequences of its success must be the elements.

Does not this view of the case, equally belong to every one of the States, Virginia for example.

Should the constituted authorities of the State unite in usurping oppressive powers; should the constituent Body fail to arrest the progress of the evil thro' the elective process according to the forms of the Constitution; and should the authority which is above that of the Constitution, the majority of the people, inflexibly support the oppression inflicted on the minority, nothing would remain for the minority, but to rally to its reserved rights (for every citizen has his reserved rights, as exemplified in Declarations prefixed to most of the State constitutions), and to decide between

acquiescence & resistance, according to the calculation above stated.

Those who question the analogy in this respect between the two cases, however different they may be in some other respects, must say, as some of them, with a boldness truly astonishing do say, that the Constitution of the U. S. which as such, and under that name, was presented to & accepted by those who ratified it; which has been so deemed & so called by those living under it for nearly half a century; and, as such sworn to by every officer, state as well as federal, is yet no Constitution, but a treaty, a league, or at most a confederacy among nations, as independent and sovereign, in relation to each other, as before the charter which calls itself a Constitution was formed.

The same zealots must again say, as they do, with a like boldness & incongruity that the Govt. of the U. S. wch. has been so deemed & so called from its birth to the present time; which is organized in the regular forms of Representative Govts. and like them operates directly on the individuals represented; and whose laws are declared to be the supreme law of the land, with a physical force in the govt. for executing them, is yet no govt. but a mere agency, a power of attorney, revocable at the will of any of the parties granting it.

Strange as it must appear, there are some who maintain these doctrines, and hold this language: and what is stranger still, denounce those as heretics and apostates who adhere to the language & tenets of their fathers, and this is done with an exulting question whether every right has not its remedy; and what remedy can be found against federal usurpations, other than that of a right in every State to nullify & resist the federal acts at its pleasure?

Yes, it may be safely admitted that every right has its remedy; as it must be admitted that the remedy under the Constitution lies where it has been marked out by the Constitution; and that no appeal can be consistently made from that remedy by those who were and still profess to be parties to it,

but the appeal to the parties themselves having an authority above the Constitution or to the law of nature & of nature's God.

It is painful to be obliged to notice such a sophism as that by which this inference is assailed. Because an unconstitutional law is no law, it is alledged that it may be constitutionally disobeyed by all who think it unconstitutional. The fallacy is so obvious, that it can impose on none but the most biassed or heedless observers. It makes no distinction where the distinction is obvious, and *essential*, between the case of a law *confessedly* unconstitutional, and a case turning on a *doubt* & a *divided opinion* as to the meaning of the Constitution; on a question, not whether the Constitution ought or ought not to be obeyed; but on the question, what is the Constitution. And can it be seriously & deliberately maintained, that every individual or every subordinate auth$^{y.}$ or every party to a compact, has a right to take for granted, that its construction is the infallible one, and to act upon it ag$^{st.}$ the construction of all others, having an equal right to expound the instrument, nay against the regular exposition of the constituted authorities, with the tacit sanction of the community. Such a doctrine must be seen at once to be subversive of all constitutions, all laws, and all compacts. The provision made by a Const$^{n.}$ for its own exposition, thro' its own authorities & forms, must prevail whilst the Constitution is left to itself by those who made it; or until cases arise which justify a resort to ultra-constitutional interpositions.

The main pillar of nullification is the assumption that sovereignty is a unit, at once indivisible and unalienable; that the states therefore individually retain it entire as they originally held it, and, consequently that no portion of it can belong to the U. S.

But is not the Const$^{n.}$ itself necessarily the offspring of a sov$^{n.}$ auth$^{y.}$? What but the highest pol: auth$^{y.}$ a sovereign auth$^{y.}$, could make such a Const$^{n.}$? a const$^{n.}$ w$^{ch.}$ makes a Gov$^{t.}$; a Gov$^{t.}$ which makes laws; laws which operate like the laws of all other gov$^{ts.}$ by a penal & physical force, on the

individuals subject to the laws; and finally laws declared to be the Supreme law of the land; anything in the Const$^{n.}$ or laws of the individual State notwithstanding.

And where does the sov$^{y.}$ which makes such a Const$^{n.}$ reside. It resides not in a single state but in the people of each of the several states, uniting with those of the others in the express & solemn compact which forms the Const$^{n.}$ To the *extent* of that compact or Constitution therefore, the people of the several States must be a sovereign as they are a united people.

In like manner, the const$^{ns.}$ of the States, made by the people as separated into States, were made by a sovereign auth$^{y.}$ by a sovereignty residing in each of the States, to the extent of the objects embraced by their respective constitutions. And if the states be thus sovereign, though shorn of so many of the essential attributes of sovereignty, the U. States by virtue of the sovereign attributes with w$^{ch.}$ they are endowed, may, to that extent, be sovereign, tho' destitute of the attributes of which the States are not shorn.

Such is the political system of the U. S. de jure & de facto; and however it may be obscured by the ingenuity and technicalities of controversial commentators, its true character will be sustained by an appeal to the law and the testimony of the fundamental charter.

The more the pol: system of the U. S. is fairly examined, the more necessary it will be found, to abandon the abstract and technical modes of expounding & designating its character; and to view it as laid down in the charter which constitutes it, as a system, hitherto without a model; as neither a simple or a consolidated Gov$^{t.}$ nor a Gov$^{t.}$ altogether confederate; and therefore not to be explained so as to make it either, but to be explained and designated, according to the actual division and distribution of political power on the face of the instrument.

A just inference from a survey of this polit: system is that it is a division and distribution of pol: power, nowhere else

to be found; a nondescript, to be tested and explained by itself alone; and that it happily illustrates the diversified modifications of which the representative principle of republicanism is susceptible with a view to the conditions, opinions, and habits of particular communities.

That a sovereignty should have even been denied to the States in their united character, may well excite wonder, when it is recollected that the Const$^{n.}$ which now unites them, was announced by the conv$^{n.}$ which formed it, as dividing sovereignty between the Union & the States; [see letter of the Presd^{t} of the Convention (W.) to the old Cong$^{s.}$[1]] that it was presented under that view, by contemporary expositions recommend$^{g.}$ it to the ratifying authorities [see Feder^{t} and other proofs]; that it is proved to have been so understood by the language which has been applied to it constantly & notoriously; that this has been the doctrine & language, until a very late date, even by those who now take the lead in making a denial of it the basis of the novel notion of nullification. [See the Report to the Legisl. of S. Carol$^{a.}$ in 1828.] So familiar is sovereignty in the U. S. to the thoughts, views & opinions even of its polemic adversaries, that Mr. Rowan, in his elaborate speech in support of the indivisibility of sovereignty, relapsed before the conclusion of his argument into the idea that sovereignty was partly in the Union, partly in the States. [See his speech in the Richmond Enquirer of the —.] Other champions of the Rights of the States among them Mr. J-n might be appealed to, as bearing testimony to the sovereignty of the U. S. If Burr had been convicted of acts defined to be treason, w$^{ch.}$ it is allowed can be committed only agst a sover$^{n.}$ auth$^{y.}$ who w$^{d.}$ then have pleaded the want of sov$^{y.}$ in the U. S. Quere. if there be no sov$^{y.}$ in the U. S. whether the crime denominated treason might not be committed, without falling within the jurisdiction of the States, and consequently, with impunity?

What seems to be an obvious & indefeasible proof that the

[1] *Documentary History of the Constitution*, ii., 1.

people of the individual States, as composing the U. States must possess a sovereignty, at least in relation to foreign sovereigns is that in that supposition only, foreign Govts. would be willing or expected to maintain international relations with the U. S. Let it be understood that the Govt. at Washington was not a national Govt. representing a sovereign authy.; and that the sovereignty resided absolutely & exclusively in the several States, as the only sovereigns & nations in our political system, and the diplomatic functionaries at the seat of the Fedl. Govt would be obliged to close their communications with the Secy. of State, and with new commissions repair to Columbia, in S. C. and other seats of the State Govts. They could no longer, as the Repts of a sovereign authy. hold intercourse with a functionary who was but an agent of a self-called Govt which was itself but an agent, representing no sovereign authority; not of the States as separate sovereignties, nor a sovereignty in the U. S. which had no existence. For a like reason, the Plenipotentiaries of the U. S. at foreign courts, would be obliged to return home unless commissioned by the individual States. With respect to foreign nations, the confederacy of the States was held de facto to be a nation, or other nations would not have held national relations with it.

There is one view of the subject which ought to have its influence on those who espouse doctrines which strike at the authoritative origin and efficacious operation of the Govt of the U. States. The Govt. of the U. S. like all Govts. free in their principles, rests on compact; a compact, not between the Govt. & the parties who formed & live under it; but among the parties themselves, and the strongest of Govts. are those in which the compacts were most fairly formed and most faithfully executed.

Now all must agree that the compact in the case of the U. S. was duly formed, and by a competent authority. It was formed, in fact by the people of the several States in their highest sovereign authority; an authority which cd. have

made the compact a mere league, or a consolidation of all entirely into one community. Such was their auth$^{y.}$ if such had been their will. It was their will to prefer to either the constitutional Gov^{t} now existing; and this being undeniably establ$^{d.}$ by a competent and even the highest human auth$^{y.}$, it follows that the obligation to give it all the effect to which any Gov$^{t.}$ could be entitled; whatever the mode of its formation, is equally undeniable. Had it been formed by the people of the U. S. as one society, the authority could not have been more competent, than that which did form it; nor w$^{d.}$ a consolidation of the people of the States into one people, be different in validity or operation, if made by the aggregate auth$^{y.}$ of the people of the States, than if made by the plenary sanction given concurrently as it was in their highest sovereign capacity. The Gov^{t} whatever it be resulting from either of these processes would rest on an auth$^{y.}$ equally competent; and be equally obligatory & operative on those over whom it was established. Nor would it be in any respect less responsible, theoretically and practically, to the constituent body, in the one hypothesis than in the other; or less subject in extreme cases to be resisted and overthrown. The faith pledged in the compact, being the vital principle of all free Gov$^{t.}$ that is the true test by which pol: right & wrong are to be decided, and the resort to physical force justified, whether applied to the enforcement or the subversion of political power.

Whatever be the *mode* in which the *essential* aut$^{y.}$ estab$^{d.}$ the Const$^{n.}$, the structure of this, the power of this, the rules of exposition, the means of execution, must be the same; the tendency to consol. or dissolution the same. The question, whether we the people means the people in their aggregate capacity, acting by a numerical maj$^{y.}$ of the whole, or by a maj$^{y.}$ in each of all the States, the auth$^{y.}$ being equally valid and binding, the question is interesting, but as an historical fact of merely speculative curiosity.

Whether the centripetal or centrifugal tendency be greatest,

is a problem which experience is to decide; but it depends not on the mode of the grant, but the extent and effect of the powers granted. The only distinctive circumstance is in the effect of a dissolution of the system on the resultum of the parties, which, in the case of a system formed by the people, as that of the United States was, would replace the states in the character of separate communities, whereas a system founded by the people, as one community, would, on its dissolution, throw the people into a state of nature.[1]

[1] See letter of J. M. to D[aniel] W[ebster] on file [March 15, 1833]. —*Madison's Note.*

The letter is as follows:

"Dear Sir—I return my thanks for the copy of your late very powerful Speech in the Senate of the United S. It crushes 'nullification' and must hasten the abandonment of 'Secession.' But *this* dodges the blow by confounding the claim to secede at will, with the right of seceding from intolerable oppression. The former answers itself, being a violation, without cause, of a faith solemnly pledged. The latter is another name only for revolution, about which there is no theoretic controversy. Its double aspect, nevertheless, with the countenance rec[d] from certain quarters, is giving it a popular currency here which may influence the approaching elections both for Congress & for the State Legislature. It has gained some advantage also, by mixing itself with the question whether the Constitution of the U. S. was formed by the people or by the States, now under a theoretic discussion by animated partizans.

"It is fortunate when disputed theories, can be decided by undisputed facts. And here the undisputed fact is, that the Constitution was made by the people, but as imbodied into the several States, who were parties to it and therefore made by the States in their highest authoritative capacity. They might, by the same authority & by the same process have converted the Confederacy into a mere league or treaty; or continued it with enlarged or abridged powers; or have imbodied the people of their respective States into one people, nation or sovereignty; or as they did by a mixed form make them one people, nation, or sovereignty, for certain purposes, and not so for others.

"The Constitution of the U. S. being established by a Competent authority, by that of the sovereign people of the several States who were the parties to it, it remains only to inquire what the Constitution is; and here it speaks for itself. It organizes a Government into the

In conclusion, those who deny the possibility of a political system, with a divided sovereignty like that of the U. S., must chuse between a government purely consolidated, & an association of Gov^ts. purely federal. All republics of the former character, ancient or modern, have been found ineffectual for order and justice within, and for security without. They have been either a prey to internal convulsions or to foreign invasions. In like manner, all confederacies, ancient or modern, have been either dissolved by the inadequacy of

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usual Legislative Executive & Judiciary Departments; invests it with specified powers, leaving others to the parties to the Constitution; it makes the Government like other Governments to operate directly on the people; places at its Command the needful Physical means of executing its powers; and finally proclaims its supremacy, and that of the laws made in pursuance of it, over the Constitutions & laws of the States; the powers of the Government being exercised, as in other elective & responsible Governments, under the controul of its Constituents, the people & legislatures of the States, and subject to the Revolutionary *Rights* of the people in extreme cases.

"It might have been added, that whilst the Constitution, therefore, is admitted to be in force, its *operation*, in *every respect* must be precisely the *same*, whether its authority be derived from that of the *people*, in the one or the other of the modes, in question; the authority being equally Competent in both; and that, without an annulment of the Constitution itself its supremacy must be submitted to.

"The only distinctive effect, between the two modes of forming a Constitution by the authority of the people, is that if formed by them as imbodied into separate communities, as in the case of the Constitution of the U. S. a dissolution of the Constitutional Compact would replace them in the condition of separate communities, that being the Condition in which they entered into the compact; whereas if formed by the people as one community, acting as such by a numerical majority, a dissolution of the compact would reduce them to a state of nature, as so many individual persons. But whilst the Constitutional compact remains undissolved, it must be executed according to the forms and provisions specified in the compact. It must not be forgotten, that compact, express or implied is the vital principle of free Governments as contradistinguished from Governments not free; and that a revolt against this principle leaves no choice but between anarchy and despotism."—*Mad. MSS.*

their cohesion, or, as in the modern examples, continue to be monuments of the frailties of such forms. Instructed by these monitory lessons, and by the failure of an experiment of their own (an experiment w^ch^, while it proved the frailty of mere federalism, proved also the frailties of republicanism without the control of a Federal organization),[1] the U. S. have adopted a modification of political power, which aims at such a distribution of it as might avoid as well the evils of consolidation as the defects of federation, and obtain the advantages of both. Thus far, throughout a period of nearly half a century, the new and compound system has been successful beyond any of the forms of Gov^t^, ancient or modern, with which it may be compared; having as yet discovered no defects which do not admit remedies compatible with its vital principles and characteristic features. It becomes all therefore who are friends of a Gov^t^ based on free principles to reflect, that by denying the possibility of a system partly federal and partly consolidated, and who would convert ours into one either wholly federal or wholly consolidated, in neither of which forms have individual rights, public order, and external safety, been all duly maintained, they aim a deadly blow at the last hope of true liberty on the face of the Earth. Its enlightened votaries must perceive the necessity of such a modification of power as will not only divide it between the whole & the parts, but provide for occurring questions as well between the whole & the parts as between the parts themselves. A political system which does not contain an effective provision for a peaceable decision of all controversies arising within itself, would be a Gov^t^ in name only. Such a provision is obviously essential; and it is equally obvious that it cannot be either

[1] The known existence of this controul has a silent influence, which is not sufficiently adverted to in our political discussions, and which has doubtless prevented collisions, in cases which might otherwise have threatened the fabric of the Union. Another preventive resource is in the fact noted by Montesquieu, that if one member of a union become diseased, it is cured by the examples and the frowns of the others, before the contagion can spread.—*Madison's Note.*

peaceable or effective by making every part an authoritative umpire. The final appeal in such cases must be to the authority of the whole, not to that of the parts separately and independently. This was the view taken of the subject, whilst the Constitution was under the consideration of the people. [See Federalist No. 39.] It was this view of it which dictated the clause declaring that the Constitution & laws of the U. S. should be the supreme law of the Land, anything in the const[n] or laws of any of the States to the contrary notwithstanding. [See Art. VI.] It was the same view which specially prohibited certain powers and acts to the States, among them any laws violating the obligation of contracts, and which dictated the appellate provision in the Judicial act passed by the first Congress under the Constitution. [See Art. I.] And it may be confidently foretold, that notwithstanding the clouds which a patriotic jealousy or other causes have at times thrown over the subject, it is the view which will be permanently taken of it, with a surprise hereafter, that any other should ever have been contended for.

TO ——— ———. MAD. MSS.

MARCH, 1836.

D[r] SIR,—The letter of Mr. Leigh to the Gen[l] Assembly presents some interesting views of its important subject & furnishes an excuse for reflections not inapposite to the present juncture.

The precise obligation imposed on a representative, by the instructions of his constituents, still divides the opinions, of distinguished statesmen. This is the case in Great Britain, where such topics have been most discussed. It is also now the case, more or less, and was so, at the first Congress under the present Constitution, as appears from the Register of Debates, imperfectly as they were reported.

It being agreed by all, that whether an instruction be obeyed or disobeyed, the act of the Representative is equally valid & operative, the question is a moral one, between the Representative, and his Constituents. With him, if satisfied, that the instruction expresses the will of his constituents, it must be to decide whether he will conform to an instruction opposed to his judgment or will incur their displeasure by disobeying it and with them to decide in what mode they will manifest their displeasure. In a case necessarily appealing to the conscience of the Representative its paramount dictates must of course be his guide.

It is well known that the equality of the States in the Federal Senate was a compromise between the larger, & the smaller states, the former claiming a proportional representation in both branches of the Legislature, as due to their superior population; the latter, an equality in both, as a safeguard to the reserved sovereignty of the States, an object which obtained the concurrence of members from the larger States. But it is equally true tho' but little adverted to as an instance of miscalculating speculation that, as soon as the smaller States, had secured more than a proportional share in the proposed Government, they became favorable to augmentations of its powers; & that under the administration of the Gov^{t}, they have generally, in contests between it, & the State governments, leaned to the former. Whether the direct effect of instructions which could make the senators dependent on the pleasure of their Constituents, or the indirect effect inferred from

such a tenure by Mr. Leigh, would be most favourable, to the General Government, or the state Governments, is a question which not being tested by practice, is left to individual opinions. My anticipations I confess do not accord with that in the letter.

Nothing is more certain than that the tenure of the Senate, was meant as an obstacle to the instability, which not only history, but the experience of our Country, had shewn to be the besetting infirmity of popular Gov^ts^ Innovations therefore impairing the stability afforded by that tenure, without some compensating remodification of the powers of the Government, must affect the balance, contemplated by the Constitution.

My prolonged life has made me a witness of the alternate popularity, & unpopularity of each of the great branches of the Federal Government. I have witnessed, also, the vicissitudes, in the apparent tendencies in the Federal & State Governments to encroach each on the authorities of the other, without being able to infer with certainty, what would be the final operation of the causes as heretofore existing; whilst it is far more difficult, to calculate, the mingled & checkered influences, on the future from an expanding territorial Domain; from the multiplication of the parties to the Union, from the great & growing power of not a few of them, from the absence of external danger; from combinations of States in some quarters, and collisions in others, and from questions, incident to a refusal of unsuccessful parties to abide by the issue of controversies

judicially decided. To these uncertainties, may be added, the effects of a dense population, & the multiplication, and the varying relations of the classes composing it. I am far however from desponding of the great political experiment in the hands of the American people. Much has already been gained in its favour, by the continued prosperity accompanying it through a period of so many years. Much may be expected from the progress and diffusion of political science in dissipating errors, opposed to the sound principles which harmonize different interests; from the Geographical, commercial, & social ligaments, strengthened as they are by mechanical improvements, giving so much advantage to time over space; & above all, by the obvious & inevitable consequences of the wreck of an ark, bearing as we have flattered ourselves the happiness of our country & the hope of the world. Nor is it unworthy of consideration, that the 4 great religious Sects, running through all the States, will oppose an event placing parts of each under separate Governments.

It cannot be denied that there are in the aspect our country presents, Phenomena of an ill omen, but it w^{d} seem that they proceed from a coincidence of causes, some transitory, others fortuitous, rarely if ever likely to recur, that of the causes more durable some can be greatly mitigated if not removed by the Legislative authority, and such as may require and be worthy the "intersit" of a higher power, can be provided for whenever, if ever, the public mind may be calm and cool enough for that resort.

Advice to my Country

As this advice, if it ever sees the light will not do it till I am no more it may be considered as issuing from the tomb where the truth alone can be respected, and the happiness of man alone consulted. It will be entitled therefore to whatever weight can be derived from good intentions, and from the experience of one who has served his Country in various stations through a period of forty years, who espoused in his youth and adhered through his life to the cause of its Liberty and who has borne a part in most of the transactions which will constitute epochs of its destiny.

The advice nearest to my heart and dearest to my intentions is that the Union of the States be cherished and perpetuated. Let the open enemy to it be regarded as a Pandora with her box opened;

and

FACSIMILE OF JAMES MADISON'S LAST MESSAGE TO HIS COUNTRYMEN
IN MRS. MADISON'S WRITING

and the disguised one, as the Serpent creeping
with his deadly wiles into Paradise

Madison.

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